

[COMMITTEE PRINT]

[June 27, 2000]

[Showing H.R. 4541, As Ordered Reported by the Committee on Agriculture]

Strike all after the enacting clause and insert the
following:

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Commodity Futures Modernization Act of 2000”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.
- Sec. 5. Legal certainty for excluded derivative transactions.
- Sec. 6. Excluded electronic trading facilities.
- Sec. 7. Hybrid instruments.
- Sec. 8. Futures on securities.
- Sec. 9. Transactions in exempt commodities.
- Sec. 10. Protection of the public interest.
- Sec. 11. Prohibited transactions.
- Sec. 12. Designation of boards of trade as contract markets.
- Sec. 13. Derivatives transaction execution facilities.
- Sec. 14. Derivatives clearing organizations.
- Sec. 15. Common provisions applicable to registered entities.
- Sec. 16. Exempt boards of trade.
- Sec. 17. Suspension or revocation of designation as contract market.
- Sec. 18. Authorization of appropriations.
- Sec. 19. Preemption.
- Sec. 20. Predispute resolution agreements for institutional customers.
- Sec. 21. Consideration of costs and benefits and antitrust laws.
- Sec. 22. Contract enforcement between eligible counterparties.
- Sec. 23. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.
- Sec. 24. Rule of construction.

Sec. 25. Technical and conforming amendments.

Sec. 26. Report to Congress.

Sec. 27. Effective date.

Sec. 28. International activities of the Commodity Futures Trading Commission.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to reauthorize the appropriation for the
4 Commodity Futures Trading Commission;

5 (2) to streamline and eliminate unnecessary
6 regulation for the commodity futures exchanges and
7 other entities regulated under the Commodity Ex-
8 change Act;

9 (3) to transform the role of the Commodity Fu-
10 tures Trading Commission to oversight of the fu-
11 tures markets;

12 (4) to provide a statutory and regulatory frame-
13 work for allowing the trading of futures on securi-
14 ties;

15 (5) to provide the Commission jurisdiction over
16 certain retail foreign exchange transactions and
17 bucket shops that may not be otherwise regulated;

18 (6) to promote innovation for futures and de-
19 rivatives and to reduce systemic risk by enhancing
20 legal certainty in the markets for certain futures and
21 derivatives transactions;

22 (7) to reduce systemic risk and provide greater
23 stability to markets during times of market disorder

1 by allowing the clearing of transactions in over-the-
2 counter derivatives through appropriately regulated
3 clearing organizations; and

4 (8) to enhance the competitive position of
5 United States financial institutions and financial
6 markets.

7 **SEC. 3. DEFINITIONS.**

8 Section 1a of the Commodity Exchange Act (7 U.S.C.
9 1a) is amended—

10 (1) by redesignating paragraphs (8) through
11 (12), (13) through (15), and (16) as paragraphs
12 (15) through (19), (21) through (23), and (27), re-
13 spectively;

14 (2) by inserting after paragraph (7) the fol-
15 lowing:

16 “(8) DERIVATIVES CLEARING ORGANIZATION.—

17 “(A) IN GENERAL.—The term ‘derivatives
18 clearing organization’ means a clearinghouse,
19 clearing association, clearing corporation, or
20 similar entity, facility, system, or organization
21 that, with respect to a derivative agreement,
22 contract, or transaction—

23 “(i) enables each party to the deriva-
24 tive agreement, contract, or transaction to
25 substitute, through novation or otherwise,

1 the credit of the derivatives clearing orga-
2 nization for the credit of the parties;

3 “(ii) arranges or provides, on a multi-
4 lateral basis, for the settlement or netting
5 of obligations resulting from such agree-
6 ments, contracts, or transactions executed
7 by parties in the derivatives clearing orga-
8 nization; or

9 “(iii) otherwise provides clearing serv-
10 ices or arrangements that mutualize or
11 transfer among parties in the derivatives
12 clearing organization the credit risk arising
13 from such agreements, contracts, or trans-
14 actions executed by the parties.

15 “(B) EXCLUSIONS.—The term ‘derivatives
16 clearing organization’ does not include an enti-
17 ty, facility, system, or organization solely be-
18 cause it arranges or provides for—

19 “(i) settlement, netting, or novation of
20 obligations resulting from agreements, con-
21 tracts, or transactions, on a bilateral basis
22 and without a centralized counterparty;

23 “(ii) settlement or netting of cash
24 payments through an interbank payment
25 system; or

1 “(iii) settlement, netting, or novation
2 of obligations resulting from a sale of a
3 commodity in a transaction in the spot
4 market for the commodity.

5 “(9) ELECTRONIC TRADING FACILITY.—The
6 term ‘electronic trading facility’ means a trading fa-
7 cility that—

8 “(A) operates by means of an electronic
9 network; and

10 “(B) maintains a real-time audit trail of
11 bids, offers, and the matching of orders or the
12 execution of transactions.

13 “(10) ELIGIBLE COMMERCIAL PARTICIPANT.—
14 The term ‘eligible commercial participant’ means a
15 party or entity described in paragraph (11)(A)(i),
16 (ii), (v), or (vii) or paragraph (11)(C), who, in con-
17 nection with its business—

18 “(A) has a demonstrable capacity or abil-
19 ity, directly or through separate contractual ar-
20 rangements, to make or take delivery of the un-
21 derlying physical commodity;

22 “(B) incurs risks, in addition to price risk,
23 related to the commodity; or

1 “(C) is a dealer that regularly provides
2 hedging, risk management, or market-making
3 services to the foregoing entities.

4 “(11) ELIGIBLE CONTRACT PARTICIPANT.—The
5 term ‘eligible contract participant’ means—

6 “(A) acting for its own account—

7 “(i) a financial institution;

8 “(ii) an insurance company regulated
9 by a State (including a subsidiary or affil-
10 iate of such an insurance company);

11 “(iii) an investment company subject
12 to regulation under the Investment Com-
13 pany Act of 1940 (15 U.S.C. 80a–1 et
14 seq.) or a foreign person performing a
15 similar role or function subject as such to
16 foreign regulation (regardless of whether
17 each investor in the investment company or
18 the foreign person is itself an eligible con-
19 tract participant);

20 “(iv) a commodity pool that—

21 “(I) has total assets exceeding
22 \$5,000,000; and

23 “(II) is formed and operated by a
24 person subject to regulation under
25 this Act or a foreign person per-

1 forming a similar role or function sub-
2 ject as such to foreign regulation (re-
3 gardless of whether each investor in
4 the commodity pool or the foreign per-
5 son is itself an eligible contract partic-
6 ipant);

7 “(v) a corporation, partnership, pro-
8 prietorship, organization, trust, or other
9 entity—

10 “(I) that has total assets exceed-
11 ing \$10,000,000;

12 “(II) the obligations of which
13 under an agreement, contract, or
14 transaction are guaranteed or other-
15 wise supported by a letter of credit or
16 keepwell, support, or other agreement
17 by an entity described in subclause
18 (I), in clause (i), (ii), (iii), (iv), or
19 (vii), or in subparagraph (C); or

20 “(III) that—

21 “(aa) has a net worth ex-
22 ceeding \$1,000,000; and

23 “(bb) enters into an agree-
24 ment, contract, or transaction in
25 connection with the conduct of

1 the entity's business or to man-
2 age the risk associated with an
3 asset or liability owned or in-
4 curred or reasonably likely to be
5 owned or incurred by the entity
6 in the conduct of the entity's
7 business;

8 “(vi) an employee benefit plan subject
9 to the Employee Retirement Income Secu-
10 rity Act of 1974 (29 U.S.C. 1001 et seq.)
11 or a foreign person performing a similar
12 role or function subject as such to foreign
13 regulation—

14 “(I) that has total assets exceed-
15 ing \$5,000,000; or

16 “(II) the investment decisions of
17 which are made by—

18 “(aa) an investment advisor
19 or commodity trading advisor
20 subject to regulation under the
21 Investment Advisers Act of 1940
22 (15 U.S.C. 80b–1 et seq.) or this
23 Act;

24 “(bb) a foreign person per-
25 forming a similar role or function

1 subject as such to foreign regula-
2 tion;

3 “(cc) a financial institution;
4 or

5 “(dd) an insurance company
6 regulated by a State (including a
7 subsidiary or affiliate of such an
8 insurance company);

9 “(vii)(I) a governmental entity (in-
10 cluding the United States, a State, or a
11 foreign government) or political subdivision
12 of a governmental entity;

13 “(II) a multinational or supranational
14 government entity; or

15 “(III) an instrumentality, agency, or
16 department of an entity described in sub-
17 clause (I) or (II);

18 “(viii) a broker or dealer subject to
19 regulation under the Securities Exchange
20 Act of 1934 (15 U.S.C. 78a et seq.) or a
21 foreign person performing a similar role or
22 function subject as such to foreign regula-
23 tion, except that, if the broker or dealer or
24 foreign person is a natural person or pro-
25 prietorship, the broker or dealer or foreign

1 person shall not be considered to be an eli-
2 gible contract participant unless the broker
3 or dealer or foreign person also meets the
4 requirements of clause (v) or (xi);

5 “(ix) a futures commission merchant
6 subject to regulation under this Act or a
7 foreign person performing a similar role or
8 function subject as such to foreign regula-
9 tion, except that, if the futures commission
10 merchant or foreign person is a natural
11 person or proprietorship, the futures com-
12 mission merchant or foreign person shall
13 not be considered to be an eligible contract
14 participant unless the futures commission
15 merchant or foreign person also meets the
16 requirements of clause (v) or (xi);

17 “(x) a floor broker or floor trader sub-
18 ject to regulation under this Act in connec-
19 tion with any transaction that takes place
20 on or through the facilities of a registered
21 entity or an exempt board of trade, or any
22 affiliate thereof, on which such person reg-
23 ularly trades; or

24 “(xi) a natural person with total as-
25 sets exceeding \$10,000,000;

1 “(B)(i) a person described in any of
2 clauses (i) through (x) of subparagraph (A) or
3 in subparagraph (C), acting as broker or per-
4 forming an equivalent agency function on behalf
5 of another person described in subparagraph
6 (A) or (C);

7 “(ii) an investment adviser subject to regu-
8 lation under the Investment Advisors Act of
9 1940, a commodity trading advisor subject to
10 regulation under this Act, a foreign person per-
11 forming a similar role or function subject as
12 such to foreign regulation, or a person de-
13 scribed in any of clauses (i) through (x) of sub-
14 paragraph (A) or in subparagraph (C), in any
15 such case acting as investment manager or fi-
16 duciary (but excluding a person acting as
17 broker or performing an equivalent agency
18 function) for another person described in sub-
19 paragraph (A) or (C) and who is authorized by
20 such person to commit such person to the
21 transaction; or

22 “(iii) a commodity trading advisor subject
23 to regulation under this Act, having assets
24 under management of not less than
25 \$25,000,000 and acting as investment manager

1 or fiduciary for another person and authorized
2 by such person to commit such person to the
3 transaction; or

4 “(C) any other person that the Commis-
5 sion determines to be eligible in light of the fi-
6 nancial or other qualifications of the person.

7 “(12) EXCLUDED COMMODITY.—The term ‘ex-
8 cluded commodity’ means—

9 “(A) an interest rate, exchange rate, cur-
10 rency, security, security index, credit risk or
11 measure, debt or equity instrument, or index or
12 measure of inflation;

13 “(B) any other rate, differential, index, or
14 measure of economic or commercial risk, re-
15 turn, or value that—

16 “(i) is not within the control of any
17 party to the relevant contract, agreement,
18 or transaction; or

19 “(ii) is not based in substantial part
20 on the value of a limited number of com-
21 modities not described in subparagraph
22 (A) that have a finite supply; or

23 “(C) an occurrence, extent of an occur-
24 rence, or contingency beyond the control of the

1 parties to the relevant contract, agreement, or
2 transaction.

3 “(13) EXEMPT COMMODITY.—The term ‘exempt
4 commodity’ means a commodity that is not an ex-
5 cluded commodity or an agricultural commodity.

6 “(14) FINANCIAL INSTITUTION.—The term ‘fi-
7 nancial institution’ means—

8 “(A) a corporation operating under the
9 fifth undesignated paragraph of section 25 of
10 the Federal Reserve Act (12 U.S.C. 603), com-
11 monly known as ‘an agreement corporation’;

12 “(B) a corporation organized under section
13 25A of the Federal Reserve Act (12 U.S.C. 611
14 et seq.), commonly known as an ‘Edge Act cor-
15 poration’;

16 “(C) an institution that is regulated by the
17 Farm Credit Administration;

18 “(D) a Federal credit union or State credit
19 union (as defined in section 101 of the Federal
20 Credit Union Act (12 U.S.C. 1752));

21 “(E) a depository institution (as defined in
22 section 3 of the Federal Deposit Insurance Act
23 (12 U.S.C. 1813));

24 “(F) a foreign bank or a branch or agency
25 of a foreign bank (each as defined in section

1 1(b) of the International Banking Act of 1978
2 (12 U.S.C. 3101(b));

3 “(G) a trust company; or

4 “(H) a similarly regulated subsidiary or af-
5 filiate of an entity described in any of subpara-
6 graphs (A) through (F).”;

7 (3) by inserting after paragraph (19) (as redes-
8 igned by paragraph (1)) the following:

9 “(20) HYBRID INSTRUMENT.—The term ‘hybrid
10 instrument’ means a deposit (as defined in section 3
11 of the Federal Deposit Insurance Act (12 U.S.C.
12 1813)) offered by a financial institution, or a secu-
13 rity, having 1 or more payments indexed to the
14 value, level, or rate of 1 or more commodities.”;

15 (4) by inserting after paragraph (23) (as redes-
16 igned by paragraph (1)) the following:

17 “(24) NONEXEMPT SECURITY.—The term ‘non-
18 exempt security’ means a security that is not an ex-
19 empted security under section 3 of the Securities
20 Act of 1933 or section 3(a)(12) of the Securities Ex-
21 change Act of 1934 (other than any municipal secu-
22 rity, as defined in section 3(a)(29) of the Securities
23 Exchange Act of 1934).

24 “(25) OPTION.—The term ‘option’ means an
25 agreement, contract, or transaction that is of the

1 character of, or is commonly known to the trade as,
2 an ‘option,’ ‘privilege,’ ‘indemnity,’ ‘bid,’ ‘offer,’
3 ‘put,’ ‘call,’ ‘advance guaranty,’ or ‘decline guar-
4 anty.’

5 “(26) ORGANIZED EXCHANGE.—The term ‘or-
6 ganized exchange’ means a trading facility that—

7 “(A) permits trading—

8 “(i) by or on behalf of a person that
9 is not an eligible contract participant; or

10 “(ii) by persons other than on a prin-
11 cipal-to-principal basis; or

12 “(B) has adopted (directly or through an-
13 other nongovernmental entity) rules that—

14 “(i) govern the conduct of partici-
15 pants, other than rules that govern the
16 submission of orders or execution of trans-
17 actions on the trading facility; or

18 “(ii) include disciplinary sanctions
19 other than the exclusion of participants
20 from trading.”; and

21 (5) by adding at the end the following:

22 “(28) REGISTERED ENTITY.—The term ‘reg-
23 istered entity’ means—

24 “(A) a board of trade designated as a con-
25 tract market under section 5;

1 “(B) a derivatives transaction execution fa-
2 cility registered under section 5a; or

3 “(C) a derivatives clearing organization
4 registered under section 5b.

5 “(29) SECURITY.—The term ‘security’ has the
6 meaning given the term in section 3(a) of the Secu-
7 rities Exchange Act of 1934 (15 U.S.C. 78c(a)) as
8 in effect on date of the enactment of this paragraph.

9 “(30) TRADING FACILITY.—

10 “(A) IN GENERAL.—The term ‘trading fa-
11 cility’ means a person or group of persons that
12 constitutes, maintains, or provides a physical or
13 electronic facility or system in which multiple
14 participants have the ability to execute or trade
15 agreements, contracts, or transactions by ac-
16 cepting bids and offers made by other partici-
17 pants that are open to multiple participants in
18 the facility or system.

19 “(B) EXCLUSIONS.—The term ‘trading fa-
20 cility’ does not include—

21 “(i) a person or group of persons sole-
22 ly because the person or group of persons
23 constitutes, maintains, or provides an elec-
24 tronic facility or system that enables par-
25 ticipants to negotiate the terms of and

1 enter into bilateral transactions as a result
2 of communications exchanged by the par-
3 ties and not from interaction of multiple
4 orders within a predetermined, nondis-
5 cretionary automated trade matching algo-
6 rithm;

7 “(ii) a government securities dealer or
8 government securities broker, to the extent
9 that the dealer or broker executes or
10 trades agreements, contracts, or trans-
11 actions in government securities, or assists
12 persons in communicating about, negoti-
13 ating, entering into, executing, or trading
14 an agreement, contract, or transaction in
15 government securities (as the terms ‘gov-
16 ernment securities dealer’, ‘government se-
17 curities broker’, and ‘government securi-
18 ties’ are defined in section 3(a) of the Se-
19 curities Exchange Act of 1934 (15 U.S.C.
20 78c(a))); or

21 “(iii) facilities on which bids and of-
22 fers, and acceptances of bids and offers ef-
23 fected on the facility, are not binding.”.

1 **SEC. 4. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN**
2 **FOREIGN CURRENCY, GOVERNMENT SECURI-**
3 **TIES, AND CERTAIN OTHER COMMODITIES.**

4 Section 2 of the Commodity Exchange Act (7 U.S.C.
5 2, 2a, 3, 4, 4a) is amended by adding at the end the fol-
6 lowing:

7 “(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS
8 IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND
9 CERTAIN OTHER COMMODITIES.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (2), nothing in this Act (other than section 5b
12 or 12(e)(2)(B)) governs or applies to an agreement,
13 contract, or transaction in—

14 “(A) foreign currency;

15 “(B) government securities;

16 “(C) security warrants;

17 “(D) security rights;

18 “(E) resales of installment loan contracts;

19 “(F) repurchase transactions in an ex-
20 cluded commodity; or

21 “(G) mortgages or mortgage purchase
22 commitments.

23 “(2) COMMISSION JURISDICTION.—

24 “(A) AGREEMENTS, CONTRACTS, AND
25 TRANSACTIONS THAT ARE FUTURES TRADED
26 ON AN ORGANIZED EXCHANGE.—This Act ap-

1 plies to, and the Commission shall have juris-
2 diction over, an agreement, contract, or trans-
3 action described in paragraph (1) that is—

4 “(i) a contract of sale of a commodity
5 for future delivery (or an option thereon),
6 or an option on a commodity (other than
7 foreign currency or a security), that is exe-
8 cuted or traded on an organized exchange;
9 or

10 “(ii) an option on foreign currency
11 and is executed or traded on an organized
12 exchange that is not a national securities
13 exchange.

14 “(B) AGREEMENTS, CONTRACTS, AND
15 TRANSACTIONS IN RETAIL FOREIGN CUR-
16 RENCY.—This Act applies to, and the Commis-
17 sion shall have jurisdiction over, an agreement,
18 contract, or transaction in foreign currency
19 that—

20 “(i) is a contract of sale for future de-
21 livery (or an option on such a contract) or
22 an option; and

23 “(ii) is offered to, or entered into
24 with, a person that is not an eligible con-
25 tract participant, unless the counterparty,

1 or the person offering to be the
2 counterparty, of the person is—

3 “(I) a financial institution;

4 “(II) a broker or dealer reg-
5 istered under section 15(b) or 15C of
6 the Securities Exchange Act of 1934
7 (15 U.S.C. 78o(b), 78o–5) or a fu-
8 tures commission merchant registered
9 under this Act;

10 “(III) an associated person of a
11 broker or dealer registered under sec-
12 tion 15(b) or 15C of the Securities
13 Exchange Act of 1934 (15 U.S.C.
14 78o(b), 78o–5), or an affiliated person
15 of a futures commission merchant
16 registered under this Act, concerning
17 the financial or securities activities of
18 which the registered person makes
19 and keeps records under section
20 15C(b) or 17(h) of the Securities Ex-
21 change Act of 1934 (15 U.S.C. 78o–
22 5(b), 78q(h)) or section 4f(c)(2)(B) of
23 this Act;

24 “(IV) an insurance company that
25 is subject to State regulation (includ-

1 ing a subsidiary or affiliate of such an
2 insurance company);
3 “(V) a financial holding company
4 (as defined in section 2 of the Bank
5 Holding Company Act of 1956); or
6 “(VI) an investment bank hold-
7 ing company (as defined in section
8 17(i) of the Securities Exchange Act
9 of 1934).”.

10 **SEC. 5. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE**
11 **TRANSACTIONS.**

12 Section 2 of the Commodity Exchange Act (7 U.S.C.
13 2, 2a, 3, 4, 4a) (as amended by section 4) is amended
14 by adding at the end the following:

15 “(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

16 “(1) IN GENERAL.—Nothing in this Act (other
17 than section 5b or 12(e)(2)(B)) governs or applies to
18 an agreement, contract, or transaction in an ex-
19 cluded commodity if—

20 “(A) the agreement, contract, or trans-
21 action is entered into only between persons that
22 are eligible contract participants at the time at
23 which the persons enter into the agreement,
24 contract, or transaction; and

1 “(B) the agreement, contract, or trans-
2 action is not executed or traded on a trading fa-
3 cility.

4 “(2) ELECTRONIC TRADING FACILITY EXCLU-
5 SION.—Nothing in this Act (other than section 5a,
6 5b, or 12(e)(2)(B)) governs or applies to an agree-
7 ment, contract, or transaction in an excluded com-
8 modity if—

9 “(A) the agreement, contract, or trans-
10 action is entered into on a principal-to-principal
11 basis between parties trading for their own ac-
12 counts or as described in section 1a(11)(B)(ii)
13 of this Act;

14 “(B) the agreement, contract, or trans-
15 action is entered into only between persons that
16 are eligible contract participants (as defined in
17 sections 1a(11)(A), (B)(ii), and (C)) at the time
18 at which the persons enter into the agreement,
19 contract, or transaction; and

20 “(C) the agreement, contract, or trans-
21 action is executed or traded on an electronic
22 trading facility.”.

1 **SEC. 6. EXCLUDED ELECTRONIC TRADING FACILITIES.**

2 Section 2 of the Commodity Exchange Act (7 U.S.C.
3 2, 2a, 3, 4, 4a) (as amended by section 5) is amended
4 by adding at the end the following:

5 “(e) EXCLUDED ELECTRONIC TRADING FACILI-
6 TIES.—

7 “(1) IN GENERAL.—Nothing in this Act (other
8 than section 12(e)(2)(B)) governs or is applicable to
9 an electronic trading facility that limits transactions
10 authorized to be conducted on its facilities to those
11 satisfying the requirements of sections 2(d)(2) and
12 2(h)(3)(B) of this Act.

13 “(2) EFFECT ON AUTHORITY TO ESTABLISH
14 AND OPERATE.—Nothing in this Act shall prohibit a
15 board of trade designated by the Commission as a
16 contract market or derivatives transaction execution
17 facility, or an exempt board of trade, from estab-
18 lishing and operating an excluded electronic trading
19 facility excluded under this Act pursuant to para-
20 graph (1).”.

21 **SEC. 7. HYBRID INSTRUMENTS.**

22 Section 2 of the Commodity Exchange Act (7 U.S.C.
23 2, 2a, 3, 4, 4a) (as amended by section 6) is amended
24 by adding at the end the following:

25 “(f) EXCLUSION FOR QUALIFYING HYBRID INSTRU-
26 MENTS.—

1 “(1) IN GENERAL.—Nothing in this Act (other
2 than section 12(e)(2)(B)) governs or is applicable to
3 a hybrid instrument that is predominantly a security
4 or depository instrument.

5 “(2) PREDOMINANCE.—A hybrid instrument
6 shall be considered to be predominantly a security or
7 depository instrument if—

8 “(A) the issuer of the hybrid instrument
9 receives payment in full of the purchase price of
10 the hybrid instrument, substantially contem-
11 poraneously with delivery of the hybrid instru-
12 ment;

13 “(B) the purchaser or holder of the hybrid
14 instrument is not required to make any pay-
15 ment to the issuer in addition to the purchase
16 price paid under subparagraph (A), whether as
17 margin, settlement payment, or otherwise, dur-
18 ing the life of the hybrid instrument or at ma-
19 turity;

20 “(C) the issuer of the hybrid instrument is
21 not subject by the terms of the instrument to
22 mark-to-market margining requirements; and

23 “(D) the hybrid instrument is not mar-
24 keted as a contract of sale for future delivery

1 of a commodity (or option on such a contract)
2 subject to this Act.

3 “(3) MARK-TO-MARKET MARGINING REQUIRE-
4 MENTS.—For the purposes of paragraph (2)(C),
5 mark-to-market margining requirements do not in-
6 clude the obligation of an issuer of a secured debt
7 instrument to increase the amount of collateral held
8 in pledge for the benefit of the purchaser of the se-
9 cured debt instrument to secure the repayment obli-
10 gations of the issuer under the secured debt instru-
11 ment.”.

12 **SEC. 8. FUTURES ON SECURITIES.**

13 Section 2 of the Commodity Exchange Act (7 U.S.C.
14 2, 2a, 3, 4, 4a) (as amended by section 7) is amended
15 by adding at the end the following:

16 “(g) Notwithstanding any other provision of law:

17 “(1) This Act shall not apply to and the Com-
18 mission shall have no jurisdiction to designate a
19 board of trade as a contract market for any trans-
20 action whereby any party to the transaction acquires
21 a put, call, or other option on 1 or more securities
22 (as defined in section 2(a)(1) of the Securities Act
23 of 1933 or section 3(a)(10) of the Securities Ex-
24 change Act of 1934, on the date of enactment of the
25 Futures Trading Act of 1982), including any group

1 or index of securities and any interest in or based
2 on the value of securities.

3 “(2) Nothing in this subsection governs or ap-
4 plies to—

5 “(A) an agreement, contract, or trans-
6 action in a commodity that is excluded under
7 subsection (c) or (d);

8 “(B) an electronic trading facility that is
9 excluded under subsection (e); or

10 “(C) a hybrid instrument that is covered
11 by an exclusion under subsection (f) or an ex-
12 emption granted by the Commission under sec-
13 tion 4(c) (whether or not the hybrid instrument
14 is otherwise subject to this Act).

15 “(3) Except as provided in paragraph (4) of
16 this subsection, or unless excluded by paragraph (2)
17 of this subsection, a person shall not offer to enter
18 into, enter into, or confirm the execution of any con-
19 tract of sale (or option on the contract) for future
20 delivery of any security or interest in or based on
21 the value of a nonexempt security.

22 “(4)(A) Except as excluded by paragraph (2) of
23 this subsection, this Act shall apply to and the Com-
24 mission shall have exclusive jurisdiction with respect
25 to accounts, agreements (including any transaction

1 which is of the character of, or is commonly known
2 to the trade as an option, privilege, indemnity, bid,
3 offer, put, call, advance guaranty, or decline guar-
4 anty), and transactions involving, and may designate
5 a board of trade as a contract market under section
6 5 or register the board of trade as a derivatives
7 transaction execution facility under section 5a in,
8 contracts of sale (or options on the contracts) for fu-
9 ture delivery of 1 or more securities (as defined in
10 section 2(a)(1) of the Securities Act of 1933 or sec-
11 tion 3(a)(10) of the Securities Exchange Act of
12 1934), including any group or index of securities
13 and any interest in or based on the value of securi-
14 ties.

15 “(B) The Commission shall not designate a
16 board of trade as a contract market under section
17 5 or register a board of trade as a derivatives trans-
18 action execution facility under section 5a with re-
19 spect to any such contracts of sale (or options on the
20 contracts) for future delivery unless the board of
21 trade demonstrates and the Commission expressly
22 finds that the specific contract (or option on the
23 contract) with respect to which the application for
24 the designation or recognition has been made meets
25 the following requirements:

1 “(i) Settlement of or delivery on the con-
2 tract (or option on the contract) shall be ef-
3 fected in cash or by means other than the
4 transfer or receipt of a nonexempt security.

5 “(ii) SUSCEPTIBILITY TO PRICE MANIPULA-
6 TION.—Trading in a contract (or option on
7 such a contract) described in subparagraph (A)
8 shall not be readily susceptible to—

9 “(I) manipulation of the price of the
10 contract (or option on such a contract); or

11 “(II) causing or being used in the ma-
12 nipulation of the price of any underlying
13 security, option on a security, or option on
14 a group or index that includes a security.

15 “(iii) If the contract is based on a single
16 nonexempt security, an option on the security
17 underlying the contract would meet all Securi-
18 ties and Exchange Commission requirements
19 for listing on a national securities exchange.

20 “(iv) If the contract is based on any group
21 or index of nonexempt securities comprised of
22 fewer than 5 securities, or on an index in which
23 a single nonexempt security predominates, an
24 option on each security comprising the group or

1 index would meet all requirements for listing on
2 a national securities exchange.

3 “(v) The contract will be traded on a
4 board of trade that establishes the level of mar-
5 gin for futures contracts (or options on the con-
6 tracts) based on a single nonexempt security,
7 an index of fewer than 5 nonexempt securities,
8 or an index in which a single nonexempt secu-
9 rity predominates, at a level consistent with the
10 level of margin on comparable option contracts
11 listed on any national securities exchange.

12 “(vi) The contract will be traded on a
13 board of trade that prohibits a person who acts
14 as a floor broker for any contract of sale (or op-
15 tions on the contract) for future delivery of a
16 nonexempt security, an index based on fewer
17 than 5 nonexempt securities, or an index in
18 which a single nonexempt security predomi-
19 nates, from trading that contract for the bro-
20 ker’s own account during the same trading ses-
21 sion.

22 “(vii) The contract will be traded on a
23 board of trade that collects, maintains, and
24 promptly provides to the Securities and Ex-
25 change Commission such information as the

1 Commission and the Securities and Exchange
2 Commission jointly consider necessary to per-
3 form the enforcement responsibilities described
4 in paragraph (6).

5 “(5) The Commission shall consult with the Se-
6 curities and Exchange Commission with respect to
7 any application submitted by a board of trade for
8 designation as a contract market or derivatives
9 transaction execution facility with respect to any
10 contract of sale (or option on the contract) for fu-
11 ture delivery of a nonexempt security or a group or
12 index of such securities. If, not later than 15 days
13 after the consultation, the Securities and Exchange
14 Commission objects to the designation of a board of
15 trade as a contract market or derivatives transaction
16 execution facility in the contract (or option on the
17 contract) on the ground that any requirement of
18 paragraph (4)(B) is not met, the Commission shall
19 afford the Securities and Exchange Commission an
20 opportunity for an oral hearing to be transcribed be-
21 fore the Commission, and shall give appropriate
22 weight to the views of the Securities and Exchange
23 Commission. The oral hearing shall be held before
24 Commission action upon the application for the des-
25 ignation, and not less than 30 nor more than 45

1 days after the Securities and Exchange Commission
2 has objected. If such an oral hearing is held, the Se-
3 curities and Exchange Commission fails to withdraw
4 its objections, and the Commission issues an order
5 designating a board of trade as a contract market
6 or recognizes the board of trade as a derivatives
7 transaction execution facility with respect to any
8 such contract (or option on the contract), the Secu-
9 rities and Exchange Commission may seek judicial
10 review of the order in accordance with the proce-
11 dural requirements set forth in section 6(c). If, pur-
12 suant to section 6, there is a hearing on the record
13 with respect to an application for such designation,
14 the Securities and Exchange Commission may par-
15 ticipate in that hearing as an interested party.

16 “(6) Notwithstanding any other provision of
17 this Act, the Securities and Exchange Commission
18 may enforce against a person that purchases or sells
19 any contract of sale (or option on the contract) for
20 future delivery of any nonexempt security, any index
21 comprised of fewer than 5 nonexempt securities, or
22 any index in which a single nonexempt security pre-
23 dominates to the same extent as if the person had
24 purchased or sold an option on the security or index
25 under the following provisions of the securities laws

1 and regulations with respect to the following cat-
2 egories of conduct:

3 “(A) Section 10(b) and 21A of the Securi-
4 ties Exchange Act of 1934 (15 U.S.C. 78j(b),
5 78u-1) with respect to insider trading.

6 “(B) Section 16(b) of such Act (15 U.S.C.
7 78p(b)) with respect to unfair use of informa-
8 tion in short swing trading by a corporate in-
9 sider.

10 “(C) Section 9 of such Act (15 U.S.C. 78i)
11 with respect to manipulation of securities
12 prices.

13 “(D) Section 10(b) of such Act (15 U.S.C.
14 78J(b)) and section 204A of the Investment
15 Adviser’s Act of 1940 (15 U.S.C. 80b-4a) with
16 respect to frontrunning.

17 “(E) Section 14 of the Securities Ex-
18 change Act of 1934 (15 U.S.C. 78n) with re-
19 spect to the pricing and integrity of tender of-
20 fers.

21 “(F) Rule 144 of the rules of the Securi-
22 ties and Exchange Commission (17 C.F.R.
23 230.144) with respect to trading in restricted
24 securities.

1 “(7)(A) Notwithstanding any other provision of
2 this Act, any contract market or derivatives trans-
3 action execution facility in a nonexempt security or
4 stock index futures contract (or option thereon) shall
5 file with the Board of Governors of the Federal Re-
6 serve System any rule establishing or changing the
7 levels of margin (initial and maintenance) for the
8 nonexempt security or stock index futures contract
9 (or option on the contract).

10 “(B) The Board may at any time request any
11 contract market or derivatives transaction execution
12 facility to set the level of margin for any nonexempt
13 security or stock index futures contract (or option
14 on the contract) at such levels as the Board in its
15 judgment determines are appropriate to preserve the
16 financial integrity of the contract market or deriva-
17 tives transaction execution facility or its clearing
18 system or to prevent systemic risk. If the contract
19 market or derivatives transaction execution facility
20 fails to do so within the time specified by the Board
21 in its request, the Board may direct the contract
22 market or derivatives transaction execution facility
23 to alter or supplement the rules of the contract mar-
24 ket or derivatives transaction execution facility as
25 specified in the request.

1 “(C) Subject to such conditions as the Board
2 may determine, the Board may delegate any or all
3 of its authority under this paragraph to the Com-
4 mission or an intermarket margin board as provided
5 in subparagraph (D).

6 “(D) INTERMARKET MARGIN BOARD.—

7 “(i) ESTABLISHMENT.—With the concur-
8 rence of the Securities and Exchange Commis-
9 sion and the Commission, the Board may estab-
10 lish an intermarket margin board, consisting of
11 representatives of any or all of the three agen-
12 cies.

13 “(ii) DUTIES.—The intermarket margin
14 board may set and maintain margin levels and
15 rules pertaining to margin for futures on a sin-
16 gle nonexempt security, an index of fewer than
17 5 nonexempt securities, or an index in which a
18 single nonexempt security predominates, listed
19 on a contract market or derivatives transaction
20 execution facility. In discharging these duties,
21 the intermarket margin board shall endeavor to
22 make the levels of margin for futures and op-
23 tions on a single nonexempt security consistent
24 taking into account any material differences in
25 such contracts, including—

1 “(I) the price volatility of the con-
2 tracts;

3 “(II) the frequency with which margin
4 calls are made; and

5 “(III) the period of time within which
6 margin calls must be met.

7 “(E) This paragraph shall not be construed to
8 supersede or limit the authority granted to the Com-
9 mission in section 8a(9) to direct a contract market
10 or derivatives transaction execution facility, on find-
11 ing an emergency to exist, to raise temporary emer-
12 gency margin levels on any futures contract or op-
13 tion on the contract covered by this paragraph.

14 “(F) Any action taken by the Board under this
15 paragraph, or by the Commission acting under the
16 delegation of authority under subparagraph (C), di-
17 recting a contract market or derivatives transaction
18 execution facility to alter or supplement a contract
19 market or derivatives transaction execution facility
20 rule shall be subject to review only in the United
21 States Court of Appeals for the judicial circuit in
22 which the party seeking review resides or has its
23 principal place of business, or in the United States
24 Court of Appeals for the District of Columbia Cir-
25 cuit. The review shall be based on the examination

1 of all information before the Board or the Commis-
2 sion, as the case may be, at the time the determina-
3 tion was made. The court reviewing the action of the
4 Board or the Commission shall not enter a stay or
5 order of mandamus unless the court determines,
6 after notice and a hearing before a panel of the
7 court, that the agency action complained of was ar-
8 bitrary, capricious, an abuse of discretion, or other-
9 wise not in accordance with law.

10 “(8) This subsection shall not be construed to
11 prohibit—

12 “(A) an agreement, contract, or trans-
13 action excluded from this Act by paragraph (2);
14 or

15 “(B) any hybrid instrument that is covered
16 by the terms of any exemption granted by the
17 Commission under section 4(c) (whether or not
18 any such hybrid instrument is otherwise subject
19 to this Act).

20 “(9)(A) No futures commission merchant, com-
21 modity trading advisor, or introducing broker shall
22 recommend to any customer the purchase or sale of
23 any contract of sale for future delivery of a single
24 nonexempt security, an index of fewer than 5 non-
25 exempt securities, or an index in which a single non-

1 exempt security predominates, unless the futures
2 commission merchant, commodity trading advisor, or
3 introducing broker complies with the rules described
4 in subparagraph (B) of a registered futures associa-
5 tion of which such merchant, advisor, or broker is a
6 member.

7 “(B) Within 9 months of the date of enactment
8 of the Commodity Futures Modernization Act of
9 2000, a registered futures association shall adopt
10 rules requiring a futures commission merchant, a
11 commodity trading advisor, or an introducing broker
12 which recommends to any customer the purchase or
13 sale of any contract of sale for future delivery of a
14 single nonexempt security, an index of fewer than 5
15 nonexempt securities, or an index in which a single
16 nonexempt security predominates to ascertain
17 through reasonable due diligence that the rec-
18 ommendation is suitable for that customer in light
19 of the customer’s financial position and trading
20 goals. The registered futures association shall con-
21 sult with the Commission and the Securities and Ex-
22 change Commission prior to the adoption of any
23 such rule, and shall submit any such rule to the
24 Commission for approval in the manner and accord-
25 ing to the procedures described in section 17(j) of

1 this Act, provided, that in such case the rule shall
2 become effective if the Commission fails to dis-
3 approve such rule within 90 days of submission.

4 “(10)(A) Nothing in this Act shall be construed
5 to require or authorize the Commission to review or
6 approve, directly or indirectly, any contract, rule,
7 regulation, or action adopted by a foreign board of
8 trade, exchange, or market, or a clearinghouse for
9 such a board of trade, exchange, or market, relating
10 to any transaction involving a contract of sale for fu-
11 ture delivery (or option on such a contract) in or in-
12 volving any security, including any foreign govern-
13 ment debt security, or group or index of such securi-
14 ties, if—

15 “(i)(I) in the case of a contract of sale for
16 future delivery (or option on such a contract) in
17 or involving a single equity security, the United
18 States is not the primary trading market for
19 the underlying security; or

20 “(II) in the case of a contract of sale for
21 future delivery (or option on such a contract) in
22 or involving a group or index of equity securi-
23 ties, less than 25 percent of the weighting of
24 the group or index is derived from securities for
25 which the United States is the primary trading

1 market for the securities underlying the con-
2 tract for future delivery (or option on the con-
3 tract); and

4 “(ii) settlement of or delivery on the con-
5 tract for future delivery (or option on such a
6 contract) is to be effected in cash or by means
7 other than the transfer or receipt of a security
8 in the United States other than an exempted
9 security.

10 “(B) Within 90 days after the date of the en-
11 actment of this paragraph, the Commission shall
12 adopt such procedures as it deems appropriate pur-
13 suant to which, consistent with this Act, the Com-
14 mission shall authorize the offer and sale in the
15 United States of any contract of sale for future de-
16 livery (or option on such a contract) of a security,
17 other than a security of the type described in sub-
18 paragraph (A)(i)(I) or a group or index of securities
19 of the type described in subparagraph (A)(i)(II),
20 traded on or subject to the rules of a foreign board
21 of trade, exchange, or market, or a clearinghouse for
22 such a board of trade, exchange, or market, except
23 that such procedures shall not require a foreign
24 board of trade, exchange, or market, or a clearing-
25 house for such a board of trade, exchange, or mar-

1 ket to apply for designation as a contract market
2 under this Act with respect to such a contract for
3 future delivery (or option on such a contract).”.

4 **SEC. 9. TRANSACTIONS IN EXEMPT COMMODITIES.**

5 Section 2 of the Commodity Exchange Act (7 U.S.C.
6 2, 2a, 3, 4, 4a) (as amended by section 8) is amended
7 by adding at the end the following.

8 “(h) LEGAL CERTAINTY FOR CERTAIN TRANS-
9 ACTIONS IN EXEMPT COMMODITIES.—

10 “(1) Except as provided in paragraph (2) of
11 this subsection, nothing in this Act shall apply to a
12 contract, agreement or transaction in an exempt
13 commodity which—

14 “(A) is entered into solely between persons
15 that are eligible contract participants at the
16 time they enter into the agreement, contract, or
17 transaction; and

18 “(B) is not entered into on a trading facil-
19 ity.

20 “(2) An agreement, contract, or transaction de-
21 scribed in paragraph (1) of this subsection shall be
22 subject to—

23 “(A) sections 5b and 12(e)(2)(B) of this
24 Act;

1 “(B) sections 4b and 4n of this Act and
2 the regulations of the Commission pursuant to
3 section 4e(b) of this Act proscribing fraud in
4 connection with commodity option transactions,
5 to the extent such agreement, contract, or
6 transaction is not between eligible commercial
7 participants and would otherwise be subject to
8 those provisions; and

9 “(C) sections 6(c) and 9(a)(2) of this Act
10 to the extent they prohibit manipulation of the
11 market price of any commodity in interstate
12 commerce, to the extent such agreement, con-
13 tract, or transaction would otherwise be subject
14 to those provisions.

15 “(3) Except as provided in paragraph (4) of
16 this subsection, nothing in this Act shall apply to an
17 agreement, contract, or transaction in an exempt
18 commodity (other than a metal commodity enumer-
19 ated in section 1a(3) of this Act) which—

20 “(A) is entered into solely between persons
21 that are eligible contract participants at the
22 time at which the persons enter into the agree-
23 ment, contract, or transaction; and

24 “(B) is executed or traded on an electronic
25 trading facility.

1 “(4) An agreement, contract, or transaction de-
2 scribed in paragraph (3) shall be subject to—

3 “(A) sections 5b and 12(e)(2)(B) of this
4 Act;

5 “(B) sections 4b and 4n of this Act and
6 the regulations of the Commission pursuant to
7 section 4e(b) of this Act proscribing fraud in
8 connection with commodity option transactions
9 and section 6(c) and 9(a)(2) of this Act, to the
10 extent these provisions prohibit manipulation of
11 the market price of any commodity in interstate
12 commerce, to the extent such agreement, con-
13 tract, or transaction would otherwise be subject
14 to those provisions; and

15 “(C) such rules and regulations as the
16 Commission may prescribe if necessary to en-
17 sure timely dissemination by the electronic trad-
18 ing facility of price, trading volume, and other
19 trading data to the extent appropriate, if the
20 Commission determines that the electronic trad-
21 ing facility performs a significant price dis-
22 covery function for transactions related to the
23 commodity executed or traded on the electronic
24 trading facility.”.

1 **SEC. 10. PROTECTION OF THE PUBLIC INTEREST.**

2 The Commodity Exchange Act is amended by striking
3 section 3 (7 U.S.C. 5) and inserting the following:

4 **“SEC. 3. FINDINGS AND PURPOSE.**

5 “(a) FINDINGS.—The futures contracts and options
6 contracts that are subject to this Act are entered into reg-
7 ularly in interstate and international commerce and are
8 affected with a national public interest by providing a
9 means for managing and assuming price risks, discovering
10 prices, and disseminating pricing information through
11 trading in liquid, fair and financially secure trading facili-
12 ties.

13 “(b) PURPOSE.—It is the purpose of this Act to serve
14 the public interests described in subsection (a) through a
15 system of effective self-regulation of trading facilities,
16 clearing systems, market participants and market profes-
17 sionals under the oversight of the Commission. To foster
18 these public interests, it is further the purpose of this Act
19 to deter and prevent price manipulation or any other dis-
20 ruptions to market integrity; to ensure the financial integ-
21 rity of all transactions subject to this Act and the avoid-
22 ance of systemic risk; to protect all market participants
23 from fraudulent or other abusive sales practices and mis-
24 uses of customer assets; and to promote responsible inno-
25 vation and fair competition among boards of trade, other
26 markets and market participants.”.

1 **SEC. 11. PROHIBITED TRANSACTIONS.**

2 Section 4c of the Commodity Exchange Act (7 U.S.C.
3 6c) is amended by striking “SEC. 4c.” and all that follows
4 through subsection (a) and inserting the following:

5 **“SEC. 4c. PROHIBITED TRANSACTIONS.**

6 “(a) IN GENERAL.—

7 “(1) PROHIBITION.—It shall be unlawful for
8 any person to offer to enter into, enter into, or con-
9 firm the execution of a transaction described in
10 paragraph (2) involving any commodity if the trans-
11 action is used or may be used to—

12 “(A) hedge any transaction in interstate
13 commerce in the commodity or the product or
14 byproduct of the commodity;

15 “(B) determine the price basis of any such
16 transaction in interstate commerce in the com-
17 modity; or

18 “(C) deliver any such commodity sold,
19 shipped, or received in interstate commerce for
20 the execution of the transaction.

21 “(2) TRANSACTION.—A transaction referred to
22 in paragraph (1) is a transaction that—

23 “(A)(i) is, is of the character of, or is com-
24 monly known to the trade as, a ‘wash sale’ or
25 ‘accommodation trade’; or

26 “(ii) is a fictitious sale; or

1 “(B) is used to cause any price to be re-
2 ported, registered, or recorded that is not a
3 true and bona fide price.”.

4 **SEC. 12. DESIGNATION OF BOARDS OF TRADE AS CON-**
5 **TRACT MARKETS.**

6 The Commodity Exchange Act is amended—

7 (1) by redesignating section 5b (7 U.S.C. 7b)
8 as section 5e; and

9 (2) by striking sections 5 and 5a (7 U.S.C. 7,
10 7a) and inserting the following:

11 **“SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CON-**
12 **TRACT MARKETS.**

13 “(a) APPLICATIONS.—A board of trade applying to
14 the Commission for designation as a contract market shall
15 submit an application to the Commission that includes any
16 relevant materials and records the Commission may re-
17 quire consistent with this Act.

18 “(b) CRITERIA FOR DESIGNATION.—

19 “(1) IN GENERAL.—To be designated as a con-
20 tract market, the board of trade shall demonstrate
21 to the Commission that the board of trade meets the
22 criteria specified in this subsection.

23 “(2) PREVENTION OF MARKET MANIPULA-
24 TION.—The board of trade shall have the capacity to
25 prevent market manipulation through market sur-

1 veillance, compliance, and enforcement practices and
2 procedures, including methods for conducting real-
3 time monitoring of trading and comprehensive and
4 accurate trade reconstructions.

5 “(3) FAIR AND EQUITABLE TRADING.—The
6 board of trade shall establish and enforce trading
7 rules to ensure fair and equitable trading through
8 the facilities of the contract market, and the capac-
9 ity to detect, investigate, and discipline any person
10 that violates the rules. Such rules may authorize—

11 “(A) an exchange of—

12 “(i) futures in connection with a cash
13 commodity transaction;

14 “(ii) futures for cash commodities;

15 “(iii) transfer trades or office trades;

16 or

17 “(iv) futures for swaps; and

18 “(B) a futures commission merchant, act-
19 ing as principal or agent, to enter into or con-
20 firm the execution of a contract for the pur-
21 chase or sale of a commodity for future delivery
22 if the contract is reported, recorded, or cleared
23 in accordance with the rules of the contract
24 market or a derivatives clearing organization.

1 “(4) TRADE EXECUTION FACILITY.—The board
2 of trade shall—

3 “(A) establish and enforce rules defining,
4 or specifications detailing, the manner of oper-
5 ation of the trade execution facility maintained
6 by the board of trade, including rules or speci-
7 fications describing the operation of any elec-
8 tronic matching platform; and

9 “(B) demonstrate that the trading facility
10 operates in accordance with the rules or speci-
11 fications.

12 “(5) FINANCIAL INTEGRITY OF TRANS-
13 ACTIONS.—The board of trade shall establish and
14 enforce rules and procedures for ensuring the finan-
15 cial integrity of transactions entered into by or
16 through the facilities of the contract market.

17 “(6) DISCIPLINARY PROCEDURES.—The board
18 of trade shall establish and enforce disciplinary pro-
19 cedures that authorize the board of trade to dis-
20 cipline, suspend, or expel members or market par-
21 ticipants that violate the rules of the board of trade,
22 or similar methods for performing the same func-
23 tions, including delegation of the functions to third
24 parties.

1 “(7) PUBLIC ACCESS.—The board of trade shall
2 provide the public with access to the rules, regula-
3 tions, and contract specifications of the board of
4 trade.

5 “(8) ABILITY TO OBTAIN INFORMATION.—The
6 board of trade shall establish and enforce rules that
7 will allow the board of trade to obtain any necessary
8 information to perform any of the functions de-
9 scribed in this subsection, including the capacity to
10 carry out such international information-sharing
11 agreements as the Commission may require.

12 “(c) EXISTING CONTRACT MARKETS.—A board of
13 trade that is designated as a contract market on the effec-
14 tive date of the Commodity Futures Modernization Act of
15 2000 shall be considered to be a designated contract mar-
16 ket under this section.

17 “(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

18 “(1) IN GENERAL.—To maintain the designa-
19 tion of a board of trade as a contract market, a
20 board of trade shall comply with the core principles
21 specified in this subsection.

22 “(2) COMPLIANCE WITH RULES.—The board of
23 trade shall monitor and enforce compliance with the
24 rules of the contract market, including the terms

1 and conditions of any contracts to be traded and any
2 limitations on access to the contract market.

3 “(3) CONTRACTS NOT READILY SUBJECT TO
4 MANIPULATION.—The board of trade shall list on
5 the contract market only contracts that are not
6 readily susceptible to manipulation.

7 “(4) MONITORING OF TRADING.—The board of
8 trade shall monitor trading to prevent manipulation,
9 price distortion, and disruptions of the delivery or
10 cash-settlement process.

11 “(5) POSITION LIMITATIONS OR ACCOUNT-
12 ABILITY.—To reduce the potential threat of market
13 manipulation or congestion, especially during trading
14 in the delivery month, the board of trade shall adopt
15 position limitations or position accountability for
16 speculators, where necessary and appropriate.

17 “(6) EMERGENCY AUTHORITY.—The board of
18 trade shall adopt rules to provide for the exercise of
19 emergency authority, in consultation or cooperation
20 with the Commission, where necessary and appro-
21 priate, including the authority to—

22 “(A) liquidate or transfer open positions in
23 any contract;

24 “(B) suspend or curtail trading in any con-
25 tract; and

1 “(C) require market participants in any
2 contract to meet special margin requirements.

3 “(7) AVAILABILITY OF GENERAL INFORMA-
4 TION.—The board of trade shall make available to
5 market authorities, market participants, and the
6 public information concerning—

7 “(A) the terms and conditions of the con-
8 tracts of the contract market; and

9 “(B) the mechanisms for executing trans-
10 actions on or through the facilities of the con-
11 tract market.

12 “(8) DAILY PUBLICATION OF TRADING INFOR-
13 MATION.—The board of trade shall make public
14 daily information on settlement prices, volume, open
15 interest, and opening and closing ranges for actively
16 traded contracts on the contract market.

17 “(9) EXECUTION OF TRANSACTIONS.—The
18 board of trade shall provide a competitive, open, and
19 efficient market and mechanism for executing trans-
20 actions.

21 “(10) TRADE INFORMATION.—The board of
22 trade shall maintain rules and procedures to provide
23 for the recording and safe storage of all identifying
24 trade information in a manner that enables the con-
25 tract market to use the information for purposes of

1 assisting in the prevention of customer and market
2 abuses and providing evidence of any violations of
3 the rules of the contract market.

4 “(11) FINANCIAL INTEGRITY OF CONTRACTS.—
5 The board of trade shall establish and enforce rules
6 providing for the financial integrity of any contracts
7 traded on the contract market, including rules to en-
8 sure the financial integrity of any futures commis-
9 sion merchants and introducing brokers and the pro-
10 tection of customer funds.

11 “(12) PROTECTION OF MARKET PARTICI-
12 PANTS.—The board of trade shall establish and en-
13 force rules to protect market participants from abu-
14 sive practices committed by any party acting as an
15 agent for the participants.

16 “(13) DISPUTE RESOLUTION.—The board of
17 trade shall establish and enforce rules regarding and
18 provide facilities for alternative dispute resolution as
19 appropriate for market participants and any market
20 intermediaries.

21 “(14) GOVERNANCE FITNESS STANDARDS.—
22 The board of trade shall establish and enforce ap-
23 propriate fitness standards for directors, members of
24 any disciplinary committee, members of the contract
25 market, and any other persons with direct access to

1 the facility (including any parties affiliated with any
2 of the persons described in this paragraph).

3 “(15) CONFLICTS OF INTEREST.—The board of
4 trade shall establish and enforce rules to minimize
5 conflicts of interest in the decisionmaking process of
6 the contract market and establish a process for re-
7 solving such conflicts of interest.

8 “(16) COMPOSITION OF BOARDS OF MUTUALLY
9 OWNED CONTRACT MARKETS.—In the case of a mu-
10 tually owned contract market, the board of trade
11 shall ensure that the composition of the governing
12 board reflects market participants.

13 “(17) RECORDKEEPING.—The board of trade
14 shall—

15 “(A) maintain full records of all activities
16 related to the business of the contract market
17 in a form and manner acceptable to the Com-
18 mission for a period of at least 5 years;

19 “(B) make the records readily available
20 during at least the first 2 years of the 5-year
21 period and provide the records to the Commis-
22 sion at the expense of the person required to
23 maintain the records; and

1 “(C) keep the records open to inspection
2 by any representative of the Commission or the
3 Department of Justice.

4 “(18) ANTITRUST CONSIDERATIONS.—Unless
5 necessary or appropriate to achieve the purposes of
6 this Act, the board of trade shall endeavor to
7 avoid—

8 “(A) adopting any rules or taking any ac-
9 tions that result in any unreasonable restraints
10 of trade; or

11 “(B) imposing any material anticompeti-
12 tive burden on trading on the contract market.

13 “(e) CURRENT AGRICULTURAL AND METAL COM-
14 MODITIES.—

15 “(1) Subject to paragraph (2), a contract for
16 purchase or sale for future delivery of an agricul-
17 tural or metal commodity enumerated in section
18 1a(3) that is available for trade on a contract mar-
19 ket, as of the date of the enactment of this sub-
20 section, may be traded only on a contract market
21 designated under this section.

22 “(2) In order to promote responsible economic
23 or financial innovation and fair competition, the
24 Commission, on application by any person, after no-
25 tice and public comment and opportunity for hear-

1 ing, may prescribe rules and regulations to provide
2 for the offer and sale of contracts for future delivery
3 or options thereon to be conducted on a derivatives
4 transaction execution facility.”.

5 **SEC. 13. DERIVATIVES TRANSACTION EXECUTION FACILI-**
6 **TIES.**

7 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
8 is amended by inserting after section 5 (as amended by
9 section 12(2)) the following:

10 **“SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILI-**
11 **TIES.**

12 “(a) IN GENERAL.—In lieu of compliance with the
13 contract market designation requirements of section 5, a
14 board of trade may elect to operate as a registered deriva-
15 tives transaction execution facility if the facility is—

16 “(1) designated as a contract market and meets
17 the requirements of this section; or

18 “(2) registered as a derivatives transaction exe-
19 cution facility under subsection (c).

20 “(b) REQUIREMENTS FOR TRADING FUTURES CON-
21 TRACTS OR OTHER DERIVATIVES TRANSACTIONS.—

22 “(1) IN GENERAL.—A registered derivatives
23 transaction execution facility under subsection (a)
24 may trade any futures contract (or option on such

1 a contract) on or through the facility only by satis-
2 fying the requirements of this section.

3 “(2) REQUIREMENTS FOR UNDERLYING COM-
4 MODITIES.—A registered derivatives transaction exe-
5 cution facility may trade any futures contract only
6 if—

7 “(A) the underlying commodity has a near-
8 ly inexhaustible deliverable supply;

9 “(B) the underlying commodity has a de-
10 liverable supply that is sufficiently large that
11 the contract is highly unlikely to be susceptible
12 to the threat of manipulation;

13 “(C) the underlying commodity has no
14 cash market; or

15 “(D) the Commission determines, based on
16 the market characteristics, surveillance history,
17 self-regulatory record, and capacity of the facil-
18 ity that trading in the futures contract is highly
19 unlikely to be susceptible to the threat of ma-
20 nipulation.

21 “(3) ELIGIBLE TRADERS.—To trade on a reg-
22 istered derivatives transaction execution facility, a
23 person shall—

24 “(A) be authorized by the board of trade
25 to trade on the facility; and

1 “(B)(i) be an eligible contract participant;

2 or

3 “(ii) be a person trading through a futures
4 commission merchant that—

5 “(I) is registered with the Commis-
6 sion;

7 “(II) is a member of a futures self-
8 regulatory organization;

9 “(III) is a clearing member of a de-
10 rivatives clearing organization; and

11 “(IV) has net capital of at least
12 \$20,000,000.

13 “(4) TRADING BY CONTRACT MARKETS.—A
14 board of trade that is designated as a contract mar-
15 ket shall, to the extent that the contract market also
16 operates a registered derivatives transaction execu-
17 tion facility—

18 “(A) provide a physical location for the
19 contract market trading of the board of trade
20 that is separate from trading on the derivatives
21 transaction execution facility of the board of
22 trade; or

23 “(B) if the board of trade uses the same
24 electronic trading system for trading on the
25 contract market and derivatives transaction

1 execution facility of the board of trade, identify
2 whether the electronic trading is taking place
3 on the contract market or the derivatives trans-
4 action execution facility.

5 “(c) CRITERIA FOR REGISTRATION.—

6 “(1) IN GENERAL.—To be registered as a reg-
7 istered derivatives transaction execution facility, the
8 board of trade shall demonstrate to the Commission
9 that the board of trade meets the criteria specified
10 in this paragraph.

11 “(2) DETERRENCE OF ABUSES.—The board of
12 trade shall establish and enforce trading rules that
13 will deter abuses and has the capacity to detect, in-
14 vestigate, and enforce those rules, including means
15 to—

16 “(A) obtain information necessary to per-
17 form the functions required under this section;
18 or

19 “(B) use technological means to—

20 “(i) provide market participants with
21 impartial access to the market; and

22 “(ii) capture information that may be
23 used in establishing whether rule violations
24 have occurred.

1 “(3) TRADING PROCEDURES.—The board of
2 trade shall establish and enforce rules or terms and
3 conditions defining, or specifications detailing, trad-
4 ing procedures to be used in entering and executing
5 orders traded on the facilities of the board of trade.
6 Such rules may authorize—

7 “(A) an exchange of—

8 “(i) futures in connection with a cash
9 commodity transaction;

10 “(ii) futures for cash commodities;

11 “(iii) transfer trades or office trades;

12 or

13 “(iv) futures for swaps; and

14 “(B) a futures commission merchant, act-
15 ing as principal or agent, to enter into or con-
16 firm the execution of a contract for the pur-
17 chase or sale of a commodity for future delivery
18 if the contract is reported, recorded, or cleared
19 in accordance with the rules of the registered
20 derivatives transaction execution facility or a
21 derivatives clearing organization.

22 “(4) FINANCIAL INTEGRITY OF TRANS-
23 ACTIONS.—The board of trade shall establish and
24 enforce rules or terms and conditions providing for
25 the financial integrity of transactions entered on or

1 through the facilities of the board of trade, including
2 rules or terms and conditions to ensure the financial
3 integrity of any futures commission merchants and
4 introducing brokers and the protection of customer
5 funds.

6 “(d) CORE PRINCIPLES FOR REGISTERED DERIVA-
7 TIVES TRANSACTION EXECUTION FACILITIES.—

8 “(1) IN GENERAL.—To maintain the registra-
9 tion of a board of trade as a derivatives transaction
10 execution facility, a board of trade shall comply with
11 the core principles specified in this subsection.

12 “(2) COMPLIANCE WITH RULES.—The board of
13 trade shall monitor and enforce the rules of the fa-
14 cility, including any terms and conditions of any
15 contracts traded on or through the facility and any
16 limitations on access to the facility.

17 “(3) MONITORING OF TRADING.—The board of
18 trade shall monitor trading in the contracts of the
19 facility to ensure orderly trading in the contract and
20 to maintain an orderly market while providing any
21 necessary trading information to the Commission to
22 allow the Commission to discharge the responsibil-
23 ities of the Commission under the Act.

1 “(4) DISCLOSURE OF GENERAL INFORMA-
2 TION.—The board of trade shall disclose publicly
3 and to the Commission information concerning—

4 “(A) contract terms and conditions;

5 “(B) trading conventions, mechanisms, and
6 practices;

7 “(C) financial integrity protections; and

8 “(D) other information relevant to partici-
9 pation in trading on the facility.

10 “(5) DAILY PUBLICATION OF TRADING INFOR-
11 MATION.—The board of trade shall make public
12 daily information on settlement prices, volume, open
13 interest, and opening and closing ranges for actively
14 traded contracts on the facility.

15 “(6) FITNESS STANDARDS.—The board of trade
16 shall establish and enforce appropriate fitness stand-
17 ards for directors, members of any disciplinary com-
18 mittee, members, and any other persons with direct
19 access to the facility, including any parties affiliated
20 with any of the persons described in this paragraph.

21 “(7) CONFLICTS OF INTEREST.—The board of
22 trade shall establish and enforce rules to minimize
23 conflicts of interest in the decisionmaking process of
24 the derivatives transaction execution facility and es-

1 tablish a process for resolving such conflicts of inter-
2 est.

3 “(8) RECORDKEEPING.—The board of trade
4 shall—

5 “(A) maintain full records of all activities
6 related to the business of the derivatives trans-
7 action execution facility in a form and manner
8 acceptable to the Commission for a period of at
9 least 5 years;

10 “(B) make the records readily available
11 during at least the first 2 years of the 5-year
12 period and provide the records to the Commis-
13 sion at the expense of the person required to
14 maintain the records; and

15 “(C) keep the records open to inspection
16 by any representatives of the Commission or the
17 Department of Justice.

18 “(9) ANTITRUST CONSIDERATIONS.—Unless
19 necessary or appropriate to achieve the purposes of
20 this Act, the board of trade shall endeavor to
21 avoid—

22 “(A) adopting any rules or taking any ac-
23 tions that result in any unreasonable restraint
24 of trade; or

1 “(B) imposing any material anticompeti-
2 tive burden on trading on the derivatives trans-
3 action execution facility.

4 “(e) USE OF BROKER-DEALERS, DEPOSITORY INSTI-
5 TUTIONS, AND FARM CREDIT SYSTEM INSTITUTIONS AS
6 INTERMEDIARIES.—

7 “(1) IN GENERAL.—A registered derivatives
8 transaction execution facility may by rule allow a
9 broker-dealer, depository institution, or institution of
10 the Farm Credit System that meets the require-
11 ments of paragraph (2) to—

12 “(A) act as an intermediary in trans-
13 actions executed on the facility on behalf of cus-
14 tomers of the broker-dealer, depository institu-
15 tion, or institution of the Farm Credit System;
16 and

17 “(B) receive funds of customers to serve as
18 margin or security for such transactions.

19 “(2) REQUIREMENTS.—The requirements re-
20 ferred to in paragraph (1) are that—

21 “(A) the broker-dealer be in good standing
22 with the Securities and Exchange Commission,
23 or the depository institution or institution of
24 the Farm Credit System be in good standing
25 with Federal bank regulatory agencies (includ-

1 ing the Farm Credit Administration), as appli-
2 cable; and

3 “(B) if the broker-dealer, depository insti-
4 tution, or institution of the Farm Credit Sys-
5 tem carries or holds customer accounts or funds
6 for transactions on the derivatives transaction
7 execution facility for more than 1 business day,
8 the broker-dealer, depository institution, or in-
9 stitution of the Farm Credit System is reg-
10 istered as a futures commission merchant and
11 is a member of a registered futures association.

12 “(3) IMPLEMENTATION.—The Commission shall
13 cooperate and coordinate with the Securities and Ex-
14 change Commission, the Secretary of the Treasury,
15 and Federal banking regulatory agencies (including
16 the Farm Credit Administration) in adopting rules
17 and taking any other appropriate action to facilitate
18 the implementation of this subsection.

19 “(f) SEGREGATION OF CUSTOMER FUNDS.—Not
20 later than 180 days after the effective date of the Com-
21 modity Futures Modernization Act of 2000, consistent
22 with regulations adopted by the Commission, a registered
23 derivatives transaction execution facility may authorize a
24 futures commission merchant to offer any customer of the
25 futures commission merchant that is an eligible contract

1 participant the right to not segregate the customer funds
2 of the futures commission merchant for purposes of trad-
3 ing on or through the facilities of the registered derivatives
4 transaction execution facility.

5 “(g) ELECTION TO TRADE EXCLUDED COMMOD-
6 ITIES.—

7 “(1) IN GENERAL.—A board of trade that is a
8 registered derivatives transaction execution facility
9 may trade on the facility any agreements, contracts,
10 or transactions involving excluded commodities that
11 are otherwise excluded from this Act under section
12 2(c), 2(d), or 2(h).

13 “(2) EXCLUSIVE JURISDICTION OF THE COM-
14 MISSION.—The Commission shall have exclusive ju-
15 risdiction over agreements, contracts, or transactions
16 described in paragraph (1) to the extent that the
17 agreements, contracts, or transactions are traded on
18 a derivatives transaction execution facility.”.

19 **SEC. 14. DERIVATIVES CLEARING ORGANIZATIONS.**

20 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
21 is amended by inserting after section 5a (as added by sec-
22 tion 13) the following:

23 **“SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.**

24 “(a) REGISTRATION REQUIREMENT.—Except as pro-
25 vided in subsection (b), it shall be unlawful for a deriva-

1 tives clearing organization, unless registered with the
2 Commission, directly or indirectly to make use of the mails
3 or any means or instrumentality of interstate commerce
4 to perform the functions of a derivatives clearing organiza-
5 tion described in section 1a(8).

6 “(b) EXCLUSION OF DERIVATIVES CLEARING ORGA-
7 NIZATIONS SUBJECT TO OTHER REGULATORY AUTHORI-
8 TIES.—A derivatives clearing organization shall not be re-
9 quired to register with the Commission, and the Commis-
10 sion shall have no jurisdiction with respect to the deriva-
11 tives clearing organization, if the derivatives clearing
12 organization—

13 “(1)(A) is registered as a clearing agency under
14 the Securities Exchange Act of 1934 (15 U.S.C. 78a
15 et seq.);

16 “(B) is subject to the supervisory jurisdiction of
17 a Federal banking agency (as defined in section 3 of
18 the Federal Deposit Insurance Act (12 U.S.C.
19 1813)) or the National Credit Union Administration;
20 or

21 “(C) is subject to the supervisory jurisdiction of
22 a foreign regulatory authority that is recognized by
23 the Securities and Exchange Commission, the Board
24 of Governors of the Federal Reserve System, the
25 Comptroller of the Currency, or the Commission as

1 overseeing a system of consolidated supervision com-
2 parable to that provided under applicable United
3 States law; and

4 “(2) does not clear a contract of sale for future
5 delivery, option on a contract of sale for future deliv-
6 ery, or option on a commodity that is not a security
7 (unless the contract or option is excluded under sub-
8 section (c) or (d) of section 2).

9 “(c) VOLUNTARY REGISTRATION.—A derivatives
10 clearing organization that is exempt from registration
11 under subsection (b) may register with the Commission
12 as a derivatives clearing organization.

13 “(d) REGISTRATION OF DERIVATIVES CLEARING OR-
14 GANIZATIONS.—

15 “(1) APPLICATION.—A person desiring to reg-
16 ister as a derivatives clearing organization shall sub-
17 mit to the Commission an application in such form
18 and containing such information as the Commission
19 may require for the purpose of making the deter-
20 minations required for approval under paragraph
21 (2).

22 “(2) CORE PRINCIPLES.—

23 “(A) IN GENERAL.—To be registered and
24 to maintain registration as a derivatives clear-
25 ing organization, an applicant shall demonstrate

1 to the Commission that the applicant complies
2 with the core principles specified in this para-
3 graph.

4 “(B) FINANCIAL RESOURCES.—The appli-
5 cant shall demonstrate that the applicant has
6 adequate financial, operational, and managerial
7 resources to discharge the responsibilities of a
8 derivatives clearing organization without inter-
9 ruption in various market conditions.

10 “(C) PARTICIPANT AND PRODUCT ELIGI-
11 BILITY.—The applicant shall establish—

12 “(i) appropriate admission and con-
13 tinuing eligibility standards (including ap-
14 propriate minimum financial requirements)
15 for members of and participants in the or-
16 ganization; and

17 “(ii) appropriate standards for deter-
18 mining eligibility of agreements, contracts,
19 or transactions submitted to the applicant.

20 “(D) RISK MANAGEMENT.—The applicant
21 shall have the ability to manage the risks asso-
22 ciated with discharging the responsibilities of a
23 derivatives clearing organization through the
24 use of appropriate tools and procedures.

1 “(E) SETTLEMENT PROCEDURES.—The
2 applicant shall have the ability to—

3 “(i) complete settlements on a timely
4 basis under varying circumstances;

5 “(ii) maintain an adequate record of
6 the flow of funds associated with each
7 transaction that the applicant clears; and

8 “(iii) comply with the terms and con-
9 ditions of any permitted netting or offset
10 arrangements with other clearing organiza-
11 tions.

12 “(F) TREATMENT OF FUNDS.—The appli-
13 cant shall have standards and procedures de-
14 signed to protect and ensure the safety of mem-
15 ber and participant funds.

16 “(G) DEFAULT RULES AND PROCE-
17 DURES.—The applicant shall have rules and
18 procedures designed to allow for efficient, fair,
19 and safe management of events when members
20 or participants become insolvent or otherwise
21 default on their obligations to the derivatives
22 clearing organization.

23 “(H) RULE ENFORCEMENT.—The appli-
24 cant shall—

1 “(i) maintain adequate arrangements
2 and resources for the effective monitoring
3 and enforcement of compliance with rules
4 of the applicant and for resolution of dis-
5 putes; and

6 “(ii) have the authority and ability to
7 discipline, limit, suspend, or terminate a
8 member’s or participant’s activities for vio-
9 lations of rules of the applicant.

10 “(I) SYSTEM SAFEGUARDS.—The applicant
11 shall demonstrate that the applicant—

12 “(i) has established and will maintain
13 a program of oversight and risk analysis to
14 ensure that the automated systems of the
15 applicant function properly and have ade-
16 quate capacity and security; and

17 “(ii) has established and will maintain
18 emergency procedures and a plan for dis-
19 aster recovery, and will periodically test
20 backup facilities sufficient to ensure daily
21 processing, clearing, and settlement of
22 transactions.

23 “(J) REPORTING.—The applicant shall
24 provide to the Commission all information nec-
25 essary for the Commission to conduct the over-

1 sight function of the applicant with respect to
2 the activities of the derivatives clearing organi-
3 zation.

4 “(K) RECORDKEEPING.—The applicant
5 shall—

6 “(i) maintain full records of all activi-
7 ties related to the business of the applicant
8 as a derivatives clearing organization in a
9 form and manner acceptable to the Com-
10 mission for a period of at least 5 years;

11 “(ii) make the records readily avail-
12 able during at least the first 2 years of the
13 5-year period and provide the records to
14 the Commission at the expense of the per-
15 son required to maintain the records; and

16 “(iii) keep the records open to inspec-
17 tion by any representative of the Commis-
18 sion or the Department of Justice.

19 “(L) PUBLIC INFORMATION.—The appli-
20 cant shall make information concerning the
21 rules and operating procedures governing the
22 clearing and settlement systems (including de-
23 fault procedures) available to market partici-
24 pants.

1 “(M) INFORMATION SHARING.—The appli-
2 cant shall—

3 “(i) enter into and abide by the terms
4 of all appropriate and applicable domestic
5 and international information-sharing
6 agreements; and

7 “(ii) use relevant information obtained
8 from the agreements in carrying out the
9 clearing organization’s risk management
10 program.

11 “(N) ANTITRUST CONSIDERATIONS.—Un-
12 less appropriate to achieve the purposes of this
13 Act, the derivatives clearing organization shall
14 avoid—

15 “(i) adopting any rule or taking any
16 action that results in any unreasonable re-
17 straint of trade; or

18 “(ii) imposing any material anti-
19 competitive burden on trading on the con-
20 tract market.

21 “(3) ORDERS CONCERNING COMPETITION.—A
22 derivatives clearing organization may request the
23 Commission to issue an order concerning whether a
24 rule or practice of the applicant is the least anti-

1 competitive means of achieving the objectives, pur-
2 poses, and policies of this Act.

3 “(e) EXISTING DERIVATIVES CLEARING ORGANIZA-
4 TIONS.—A derivatives clearing organization shall be
5 deemed to be registered under this section to the extent
6 that—

7 “(1) the derivatives clearing organization clears
8 agreements, contracts, or transactions for a board of
9 trade that has been designated by the Commission
10 as a contract market for such agreements, contracts,
11 or transactions before the date of enactment of this
12 section; and

13 “(2) the Commission has reviewed and ap-
14 proved the rules of the derivatives clearing organiza-
15 tion before that date.

16 “(f) APPOINTMENT OF TRUSTEE.—

17 “(1) IN GENERAL.—If a proceeding under sec-
18 tion 5e results in the suspension or revocation of the
19 registration of a derivatives clearing organization, or
20 if a derivatives clearing organization withdraws from
21 registration, the Commission, on notice to the de-
22 rivatives clearing organization, may apply to the ap-
23 propriate United States district court where the de-
24 rivatives clearing organization is located for the ap-
25 pointment of a trustee.

1 “(2) ASSUMPTION OF JURISDICTION.—If the
2 Commission applies for appointment of a trustee
3 under paragraph (1)—

4 “(A) the court may take exclusive jurisdic-
5 tion over the derivatives clearing organization
6 and the records and assets of the derivatives
7 clearing organization, wherever located; and

8 “(B) if the court takes jurisdiction under
9 subparagraph (A), the court shall appoint the
10 Commission, or a person designated by the
11 Commission, as trustee with power to take pos-
12 session and continue to operate or terminate
13 the operations of the derivatives clearing orga-
14 nization in an orderly manner for the protection
15 of participants, subject to such terms and con-
16 ditions as the court may prescribe.

17 “(g) LINKING OF REGULATED CLEARING FACILI-
18 TIES.—

19 “(1) IN GENERAL.—The Commission shall fa-
20 cilitate the linking or coordination of derivatives
21 clearing organizations registered under this Act with
22 other regulated clearance facilities for the coordi-
23 nated settlement of cleared transactions.

24 “(2) COORDINATION.—In carrying out para-
25 graph (1), the Commission shall coordinate with the

1 Federal banking agencies and the Securities and Ex-
2 change Commission.”.

3 **SEC. 15. COMMON PROVISIONS APPLICABLE TO REG-**
4 **ISTERED ENTITIES.**

5 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
6 is amended by inserting after section 5b (as added by sec-
7 tion 14) the following:

8 **“SEC. 5c. COMMON PROVISIONS APPLICABLE TO REG-**
9 **ISTERED ENTITIES.**

10 **“(a) ACCEPTABLE BUSINESS PRACTICES UNDER**
11 **CORE PRINCIPLES.—**

12 **“(1) IN GENERAL.—**Consistent with the pur-
13 poses of this Act, the Commission may issue inter-
14 pretations, or approve interpretations submitted to
15 the Commission, of sections 5(d), 5a(d), and
16 5b(d)(2) to describe what would constitute an ac-
17 ceptable business practice under such sections.

18 **“(2) EFFECT OF INTERPRETATION.—**An inter-
19 pretation issued under paragraph (1) shall not pro-
20 vide the exclusive means for complying with such
21 sections.

22 **“(b) DELEGATION OF FUNCTIONS UNDER CORE**
23 **PRINCIPLES.—**

24 **“(1) IN GENERAL.—**A contract market or de-
25 rivatives transaction execution facility may comply

1 with any applicable core principle through delegation
2 of any relevant function to a registered futures asso-
3 ciation or another registered entity.

4 “(2) RESPONSIBILITY.—A contract market or
5 derivatives transaction execution facility that dele-
6 gates a function under paragraph (1) shall remain
7 responsible for carrying out the function.

8 “(c) NEW CONTRACTS, NEW RULES, AND RULE
9 AMENDMENTS.—

10 “(1) IN GENERAL.—Subject to paragraph (2), a
11 registered entity may elect to list for trading any
12 new contract or other instrument, or may elect to
13 approve and implement any new rule or rule amend-
14 ment, by providing to the Commission (and the Sec-
15 retary of the Treasury, in the case of a contract of
16 sale for future delivery of a government security (or
17 option thereon) or a rule or rule amendment specifi-
18 cally related to such a contract) a written certifi-
19 cation that the new contract, new rule, or rule
20 amendment complies with this Act (including regula-
21 tions under this Act).

22 “(2) PRIOR APPROVAL.—

23 “(A) IN GENERAL.—A registered entity
24 may request that the Commission grant prior

1 approval to any new contract or other instru-
2 ment, new rule, or rule amendment.

3 “(B) PRIOR APPROVAL REQUIRED.—Not-
4 withstanding any other provision of this section,
5 a designated contract market shall submit to
6 the Commission for prior approval each rule
7 amendment that materially changes the terms
8 and conditions, as determined by the Commis-
9 sion, in any contract of sale for future delivery
10 of a commodity specifically enumerated in sec-
11 tion 1a(3) of this Act (or any option thereon)
12 traded through its facilities if such rule amend-
13 ment applies to contracts and delivery months
14 which have already been listed for trading and
15 have open interest.

16 “(C) DEADLINE.—If prior approval is re-
17 quested under subparagraph (A), the Commis-
18 sion shall take final action on the request not
19 later than 90 days after submission of the re-
20 quest, unless the person submitting the request
21 agrees to an extension of the time limitation es-
22 tablished under this subparagraph.

23 “(3) APPROVAL.—The Commission shall ap-
24 prove any such new contract or instrument, new
25 rule, or rule amendment unless the Commission

1 finds that the new contract or instrument, new rule,
2 or rule amendment would violate this Act.

3 “(d) VIOLATION OF CORE PRINCIPLES.—

4 “(1) IN GENERAL.—If the Commission has rea-
5 son to believe that a registered entity is violating
6 any applicable provision specified in section 5(d),
7 5a(d), or 5b(d)(2), the Commission shall notify the
8 registered entity in writing of the reasons for the
9 preliminary determination by the Commission of a
10 violation, including any data, materials, and facts
11 the Commission relied on in making the preliminary
12 determination.

13 “(2) INJUNCTIVE OR ADMINISTRATIVE AC-
14 TION.—The Commission may initiate an action for
15 an injunction under section 6c or an administrative
16 proceeding, to demonstrate, by the preponderance of
17 the evidence, that—

18 “(A) the registered entity is violating any
19 applicable provision specified in section 5(d),
20 5a(d), or 5b(d)(2); and

21 “(B) the Commission has recommended an
22 appropriate remedial action to remove the defi-
23 ciency based on an analysis of the costs and
24 benefits in the public interest of the Commis-
25 sion recommendation.

1 “(3) BURDEN OF PROOF.—In making a deter-
2 mination that a registered entity is violating any ap-
3 plicable provision specified in section 5(d), 5a(d), or
4 5b(d)(2), the Commission shall have the burden of
5 proving that the registered entity is violating the ap-
6 plicable core principle.

7 “(e) RESERVATION OF EMERGENCY AUTHORITY.—
8 Nothing in this section shall limit or in any way affect
9 the emergency powers of the Commission provided in sec-
10 tion 8a(9) of this Act.”.

11 **SEC. 16. EXEMPT BOARDS OF TRADE.**

12 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
13 is amended by inserting after section 5c (as added by sec-
14 tion 15) the following:

15 **“SEC. 5d. EXEMPT BOARDS OF TRADE.**

16 “(a) IN GENERAL.—Except as otherwise provided in
17 this section, a contract of sale (or option on such a con-
18 tract) of a commodity for future delivery traded on or
19 through the facilities of an exempt board of trade shall
20 be exempt from all provisions of this Act, other than sec-
21 tion 2(g).

22 “(b) CRITERIA FOR EXEMPTION.—To qualify for an
23 exemption under subsection (a), a board of trade shall
24 limit trading on or through the facilities of the board of

1 trade to contracts of sale of a commodity for future deliv-
2 ery (or options on such contracts)—

3 “(1) that have—

4 “(A) a nearly inexhaustible deliverable sup-
5 ply;

6 “(B) a deliverable supply that is suffi-
7 ciently large, and a cash market sufficiently liq-
8 uid, to render any contract traded on the com-
9 modity highly unlikely to be susceptible to the
10 threat of manipulation; or

11 “(C) no cash market;

12 “(2) that are entered into only between persons
13 that are eligible contract participants at the time at
14 which the persons enter into the contract; and

15 “(3) that are not contracts of sale (or options
16 on the contract) for future delivery of any security,
17 including any group or index of securities or any in-
18 terest in, or interest that is based on the value of,
19 any security.

20 “(c) ANTIMANIPULATION REQUIREMENTS.—A party
21 to a futures contract or related option that is traded on
22 an exempt board of trade shall be subject to sections 4b,
23 4n, 6(c), and 9(a)(2), and the Commission shall enforce
24 those provisions with respect to any such trading.

1 “(d) PRICE DISCOVERY.—If the Commission finds
2 that an exempt board of trade is a significant source of
3 price discovery for any underlying commodity in any
4 transaction traded on or through the facilities of the board
5 of trade, the board of trade shall disseminate publicly on
6 a daily basis trading volume, opening and closing price
7 ranges, open interest, and other trading data as appro-
8 priate to the market.

9 “(e) JURISDICTION.—The Commission shall have ex-
10 clusive jurisdiction over any account, agreement, or trans-
11 action involving a contract of sale of a commodity for fu-
12 ture delivery, or related option, to the extent that such
13 account, agreement, or transaction is traded on an exempt
14 board of trade.

15 “(f) SUBSIDIARIES.—A board of trade that is des-
16 ignated as a contract market or registered as a derivatives
17 transaction execution facility may operate an exempt
18 board of trade by establishing a separate subsidiary or
19 other legal entity and otherwise satisfying the require-
20 ments of this section.”.

21 **SEC. 17. SUSPENSION OR REVOCATION OF DESIGNATION**
22 **AS CONTRACT MARKET.**

23 Section 5e of the Commodity Exchange Act (7 U.S.C.
24 7b) (as redesignated by section 12(1)) is amended to read
25 as follows:

1 **“SEC. 5e. SUSPENSION OR REVOCATION OF DESIGNATION**
2 **AS REGISTERED ENTITY.**

3 “The failure of a registered entity to comply with any
4 provision of this Act, or any regulation or order of the
5 Commission under this Act, shall be cause for the suspen-
6 sion of the registered entity for a period not to exceed 180
7 days, or revocation of designation as a registered entity
8 in accordance with the procedures and subject to the judi-
9 cial review provided in section 6(b).”.

10 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS.**

11 Section 12(d) of the Commodity Exchange Act (7
12 U.S.C. 16(d)) is amended by striking “2000” and insert-
13 ing “2005”.

14 **SEC. 19. PREEMPTION.**

15 Section 12(e) of the Commodity Exchange Act (7
16 U.S.C. 16(e)) is amended by striking paragraph (2) and
17 inserting the following:

18 “(2) the application of any Federal or State law
19 (including any regulation) to an agreement, contract,
20 or transaction in or involving any commodity, prod-
21 uct, right, service, or interest, except that this Act
22 shall supersede and preempt—

23 “(A) in the case of any such agreement,
24 contract, or transaction—

1 “(i) that is conducted on or subject to
2 the rules of a registered entity or exempt
3 board of trade;

4 “(ii) that is conducted on or subject
5 to the rules of any board of trade, ex-
6 change, or market located outside the
7 United States, or any territory or posses-
8 sion of the United States (in accordance
9 with any terms or conditions specified by
10 the Commission by regulation); and

11 “(iii) that is subject to regulation by
12 the Commission under section 4c or 19;
13 and

14 “(B) any State or local law that prohibits
15 or regulates gaming or the operation of bucket
16 shops (other than antifraud provisions of gen-
17 eral applicability) in the case of—

18 “(i) an electronic trading facility
19 under section 2(e); or

20 “(ii) an agreement, contract, or trans-
21 action that is excluded or exempt under
22 section 2(c), 2(d), 2(f), or 2(h) or is cov-
23 ered by the terms of an exemption granted
24 by the Commission under section 4(c) (re-
25 gardless of whether any such agreement,

1 contract, or transaction is otherwise sub-
2 ject to this Act); or”.

3 **SEC. 20. PREDISPUTE RESOLUTION AGREEMENTS FOR IN-**
4 **STITUTIONAL CUSTOMERS.**

5 Section 14 of the Commodity Exchange Act (7 U.S.C.
6 18) is amended by striking subsection (g) and inserting
7 the following:

8 “(g) PREDISPUTE RESOLUTION AGREEMENTS FOR
9 INSTITUTIONAL CUSTOMERS.—Nothing in this section
10 prohibits a registered futures commission merchant from
11 requiring a customer that is an eligible contract partici-
12 pant, as a condition to the commission merchant’s con-
13 ducting a transaction for the customer, to enter into an
14 agreement waiving the right to file a claim under this sec-
15 tion.”.

16 **SEC. 21. CONSIDERATION OF COSTS AND BENEFITS AND**
17 **ANTITRUST LAWS.**

18 Section 15 of the Commodity Exchange Act (7 U.S.C.
19 19) is amended by striking “SEC. 15. The Commission”
20 and inserting the following:

21 **“SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND**
22 **ANTITRUST LAWS.**

23 “(a) COSTS AND BENEFITS.—

24 “(1) IN GENERAL.—Before promulgating a reg-
25 ulation under this Act or issuing an order (except as

1 provided in paragraph (3)), the Commission shall
2 consider the costs and benefits of the action of the
3 Commission.

4 “(2) CONSIDERATIONS.—The costs and benefits
5 of the proposed Commission action shall be evalu-
6 ated in light of—

7 “(A) considerations of protection of market
8 participants and the public;

9 “(B) considerations of the efficiency, com-
10 petitiveness, and financial integrity of futures
11 markets;

12 “(C) considerations of price discovery;

13 “(D) considerations of sound risk manage-
14 ment practices; and

15 “(E) other public interest considerations.

16 “(3) APPLICABILITY.—This subsection does not
17 apply to the following actions of the Commission:

18 “(A) An order that initiates, is part of, or
19 is the result of an adjudicatory or investigative
20 process of the Commission.

21 “(B) An emergency action.

22 “(C) A finding of fact regarding compli-
23 ance with a requirement of the Commission.

24 “(b) ANTITRUST LAWS.—The Commission”.

1 **SEC. 22. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE**
2 **COUNTERPARTIES.**

3 Section 22(a) of the Commodity Exchange Act (7
4 U.S.C. 25(a)) is amended by adding at the end the fol-
5 lowing:

6 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
7 GIBLE COUNTERPARTIES.—No agreement, contract,
8 or transaction between eligible contract participants
9 shall be void, voidable, or unenforceable, and no
10 such eligible contract participant shall be entitled to
11 rescind, or recover any payment made with respect
12 to, such an agreement, contract, or transaction,
13 under this section based solely on the failure of the
14 agreement, contract, or transaction to comply with
15 the terms or conditions of an exemption or exclusion
16 from any provision of this Act or regulations of the
17 Commission.”.

18 **SEC. 23. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**
19 **CILITATE BONA FIDE HEDGING BY AGRICUL-**
20 **TURAL PRODUCERS.**

21 The Commodity Exchange Act, as otherwise amended
22 by this Act, is amended by inserting after section 4o the
23 following:

1 **“SEC. 4p. SPECIAL PROCEDURES TO ENCOURAGE AND FA-**
2 **CILITATE BONA FIDE HEDGING BY AGRICUL-**
3 **TURAL PRODUCERS.**

4 “(a) AUTHORITY.—The Commission shall consider
5 issuing rules or orders which—

6 “(1) prescribe procedures under which each
7 contract market is to provide for orderly delivery, in-
8 cluding temporary storage costs, of any agricultural
9 commodity enumerated in section 1a(3) which is the
10 subject of a contract for purchase or sale for future
11 delivery;

12 “(2) increase the ease with which domestic agri-
13 cultural producers may participate in contract mar-
14 kets, including by addressing cost and margin re-
15 quirements, so as to better enable such producers to
16 hedge price risk associated with their production;

17 “(3) provide flexibility in the minimum quan-
18 tities of such agricultural commodities that may be
19 the subject of a contract for purchase or sale for fu-
20 ture delivery that is traded on a contract market, to
21 better allow domestic agricultural producers to hedge
22 such price risk; and

23 “(4) encourage exchanges to provide informa-
24 tion and otherwise facilitate the participation of do-
25 mestic agricultural producers in contract markets.

1 “(b) REPORT.—Within 1 year after the date of enact-
2 ment of this section, the Commission shall submit to the
3 Committee on Agriculture of the House of Representatives
4 and the Committee on Agriculture, Nutrition, and For-
5 estry of the Senate a report on the steps it has taken to
6 implement this section and on the activities of contract
7 markets pursuant to this section.”.

8 **SEC. 24. RULE OF CONSTRUCTION.**

9 Except as expressly provided in this Act or an amend-
10 ment made by this Act, nothing in this Act or an amend-
11 ment made by the Act supersedes, affects, or otherwise
12 limits or expands the scope and applicability of laws gov-
13 erning the Securities and Exchange Commission.

14 **SEC. 25. TECHNICAL AND CONFORMING AMENDMENTS.**

15 (a) COMMODITY EXCHANGE ACT.—

16 (1) Section 1a of the Commodity Exchange Act
17 (7 U.S.C. 1a) is amended—

18 (A) in paragraph (3), by inserting “alu-
19 minum, copper, gold, palladium, platinum, sil-
20 ver” after “orange juice”;

21 (B) in paragraphs (4), (5), (8), (9), (12),
22 and (14), by inserting “or derivatives trans-
23 action execution facility” after “contract mar-
24 ket” each place it appears; and

25 (C) in paragraph (15)—

1 (i) in the paragraph heading, by strik-
2 ing “CONTRACT MARKET” and inserting
3 “REGISTERED ENTITY”; and

4 (ii) by striking “contract market”
5 each place it appears and inserting “reg-
6 istered entity”.

7 (2) Section 2 of the Commodity Exchange Act
8 (7 U.S.C. 2, 2a, 4, 4a, 3) is amended—

9 (A) by striking “SEC. 2. (a)(1)(A)(i) The”
10 and inserting the following:

11 **“SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF**
12 **PRINCIPAL FOR ACT OF AGENT; COMMODITY**
13 **FUTURES TRADING COMMISSION; TRANS-**
14 **ACTION IN INTERSTATE COMMERCE.**

15 **“(a) JURISDICTION OF COMMISSION; COMMODITY**
16 **FUTURES TRADING COMMISSION.—**

17 **“(1) JURISDICTION OF COMMISSION.—**

18 **“(A) IN GENERAL.—The”; and**

19 **(B) in subsection (a)—**

20 (i) in paragraph (1) (as amended by
21 subparagraph (A))—

22 (I) by striking subparagraph (B);

23 (II) by striking “subparagraph
24 (B) of this subparagraph” and insert-
25 ing “subsection (g)”;

1 (III) by striking “contract mar-
2 ket designated pursuant to section 5
3 of this Act” and inserting “contract
4 market designated or derivatives
5 transaction execution facility reg-
6 istered pursuant to section 5 or 5a”;

7 (IV) by striking clause (ii); and

8 (V) in clause (iii), by striking
9 “(iii) The” and inserting the fol-
10 lowing:

11 “(B) LIABILITY OF PRINCIPAL FOR ACT OF
12 AGENT.—The”;

13 (ii) in paragraph (7), by striking
14 “contract market” and inserting “reg-
15 istered entity”; and

16 (iii) in paragraph (8)(B)(ii)—

17 (I) in the first sentence, by strik-
18 ing “designation as a contract mar-
19 ket” and inserting “designation or
20 registration as a contract market or
21 derivatives transaction execution facil-
22 ity”;

23 (II) in the second sentence, by
24 striking “designate a board of trade
25 as a contract market” and inserting

1 “designate or register a board of
2 trade as a contract market or deriva-
3 tives transaction execution facility”;
4 and

5 (III) in the fourth sentence, by
6 striking “designating, or refusing,
7 suspending, or revoking the designa-
8 tion of, a board of trade as a contract
9 market involving transactions for fu-
10 ture delivery referred to in this clause
11 or in considering possible emergency
12 action under section 8a(9) of this
13 Act” and inserting “designating, reg-
14 istering, or refusing, suspending, or
15 revoking the designation or registra-
16 tion of, a board of trade as a contract
17 market or derivatives transaction exe-
18 cution facility involving transactions
19 for future delivery referred to in this
20 clause or in considering any possible
21 action under this Act (including with-
22 out limitation emergency action under
23 section 8a(9))”, and by striking “des-
24 ignation, suspension, revocation, or
25 emergency action” and inserting “des-

1 ignation, registration, suspension, rev-
2 ocation, or action”.

3 (3) Section 4 of the Commodity Exchange Act
4 (7 U.S.C. 6) is amended—

5 (A) in subsection (a)—

6 (i) in paragraph (1), by striking “des-
7 ignated by the Commission as a ‘contract
8 market’ for” and inserting “designated or
9 registered by the Commission as a contract
10 market or derivatives transaction execution
11 facility for”;

12 (ii) in paragraph (2), by striking
13 “member of such”; and

14 (iii) in paragraph (3), by inserting “or
15 derivatives transaction execution facility”
16 after “contract market”; and

17 (B) in subsection (c)—

18 (i) in paragraph (1)—

19 (I) by striking “designated as a
20 contract market” and inserting “des-
21 ignated or registered as a contract
22 market or derivatives transaction exe-
23 cution facility”; and

1 (II) by striking “section
2 2(a)(1)(B)” and inserting “section
3 2(g)”; and

4 (ii) in paragraph (2)(B)(ii), by insert-
5 ing “or derivatives transaction execution
6 facility” after “contract market”.

7 (4) Section 4a of the Commodity Exchange Act
8 (7 U.S.C. 6a) is amended—

9 (A) in subsection (a)—

10 (i) in the first sentence, by inserting
11 “or derivatives transaction execution facili-
12 ties” after “contract markets”; and

13 (ii) in the second sentence, by insert-
14 ing “or derivatives transaction execution
15 facility” after “contract market”;

16 (B) in subsection (b), by inserting “or de-
17 rivatives transaction execution facility” after
18 “contract market” each place it appears; and

19 (C) in subsection (e)—

20 (i) by striking “contract market or”
21 each place it appears and inserting “con-
22 tract market, derivatives transaction execu-
23 tion facility, or”;

24 (ii) by striking “licensed or des-
25 ignated” each place it appears and insert-

1 ing “licensed, designated, or registered”;
2 and

3 (iii) by striking “contract market, or”
4 and inserting “contract market or deriva-
5 tives transaction execution facility, or”.

6 (5) Section 4b(a) of the Commodity Exchange
7 Act (7 U.S.C. 6b(a)) is amended by striking “con-
8 tract market” each place it appears and inserting
9 “registered entity”.

10 (6) Sections 4c(g), 4d, 4e, and 4f of the Com-
11modity Exchange Act (7 U.S.C. 6c(g), 6d, 6e, 6f)
12are amended by inserting “or derivatives transaction
13execution facility” after “contract market” each
14place it appears.

15 (7) Section 4g of the Commodity Exchange Act
16(7 U.S.C. 6g) is amended—

17 (A) in subsection (b), by striking “clear-
18inghouse and contract market” and inserting
19“registered entity”; and

20 (B) in subsection (f), by striking “clearing-
21houses, contract markets, and exchanges” and
22inserting “registered entities”.

23 (8) Section 4h of the Commodity Exchange Act
24(7 U.S.C. 6h) is amended by striking “contract mar-

1 ket” each place it appears and inserting “registered
2 entity”.

3 (9) Section 4i of the Commodity Exchange Act
4 (7 U.S.C. 6i) is amended in the first sentence by in-
5 serting “or derivatives transaction execution facility”
6 after “contract market”.

7 (10) Section 4j of the Commodity Exchange
8 Act (7 U.S.C. 6j) is repealed.

9 (11) Section 4l of the Commodity Exchange Act
10 (7 U.S.C. 6l) is amended by inserting “or derivatives
11 transaction execution facilities” after “contract mar-
12 kets” each place it appears.

13 (12) Section 4p of the Commodity Exchange
14 Act (7 U.S.C. 6p) is amended—

15 (A) in the third sentence of subsection (a),
16 by striking “Act or contract markets” and in-
17 serting “Act, contract markets, or derivatives
18 transaction execution facilities”; and

19 (B) in subsection (b), by inserting “deriva-
20 tives transaction execution facility,” after “con-
21 tract market,”.

22 (13) The Commodity Exchange Act (as amend-
23 ed by paragraphs (10), (11), and (12)) is amended
24 by redesignating section 4k through 4p (7 U.S.C. 6k
25 through 6p) as sections 4j through 4o, respectively.

1 (14) Section 6 of the Commodity Exchange Act
2 (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—

3 (A) in subsection (a)—

4 (i) in the first sentence—

5 (I) by striking “board of trade
6 desiring to be designated a ‘contract
7 market’ shall make application to the
8 Commission for such designation” and
9 inserting “person desiring to be des-
10 ignated or registered as a contract
11 market or derivatives transaction exe-
12 cution facility shall make application
13 to the Commission for such designa-
14 tion or registration”;

15 (II) by striking “above condi-
16 tions” and inserting “conditions set
17 forth in this Act”; and

18 (III) by striking “above require-
19 ments” and inserting “the require-
20 ments of this Act”;

21 (ii) in the second sentence, by striking
22 “designation as a contract market within
23 one year” and inserting “designation or
24 registration as a contract market or de-

1 derivatives transaction execution facility
2 within 180 days”;

3 (iii) in the third sentence—

4 (I) by striking “board of trade”
5 and inserting “person”; and

6 (II) by striking “one-year period”
7 and inserting “180-day period”; and

8 (iv) in the last sentence, by striking
9 “designate as a ‘contract market’ any
10 board of trade that has made application
11 therefor, such board of trade” and insert-
12 ing “designate or register as a contract
13 market or derivatives transaction execution
14 facility any person that has made applica-
15 tion therefor, such person”;

16 (B) in subsection (b)—

17 (i) in the first sentence—

18 (I) by striking “designation of
19 any board of trade as a ‘contract mar-
20 ket’ upon” and inserting “designation
21 or registration of any contract market
22 or derivatives transaction execution
23 facility on”;

24 (II) by striking “board of trade”
25 each place it appears and inserting

1 “contract market or derivatives trans-
2 action execution facility”; and

3 (III) by striking “designation as
4 set forth in section 5 of this Act” and
5 inserting “designation or registration
6 as set forth in sections 5 through 5b”;

7 (ii) in the second sentence—

8 (I) by striking “board of trade”
9 the first place it appears and inserting
10 “contract market or derivatives trans-
11 action execution facility”; and

12 (II) by striking “board of trade”
13 the second and third places it appears
14 and inserting “person”; and

15 (iii) in the last sentence, by striking
16 “board of trade” each place it appears and
17 inserting “person”;

18 (C) in subsection (c)—

19 (i) by striking “contract market” each
20 place it appears and inserting “registered
21 entity”;

22 (ii) by striking “contract markets”
23 each place it appears and inserting “reg-
24 istered entities”; and

1 (iii) by striking “trading privileges”
2 each place it appears and inserting “privi-
3 leges”;

4 (D) in subsection (d), by striking “contract
5 market” each place it appears and inserting
6 “registered entity”; and

7 (E) in subsection (e), by striking “trading
8 on all contract markets” each place it appears
9 and inserting “the privileges of all registered
10 entities”.

11 (15) Section 6a of the Commodity Exchange
12 Act (7 U.S.C. 10a) is amended—

13 (A) in the first sentence of subsection (a),
14 by striking “designated as a ‘contract market’
15 shall” and inserting “designated or registered
16 as a contract market or a derivatives trans-
17 action execution facility”; and

18 (B) in subsection (b), by striking “des-
19 ignated as a contract market” and inserting
20 “designated or registered as a contract market
21 or a derivatives transaction execution facility”.

22 (16) Section 6b of the Commodity Exchange
23 Act (7 U.S.C. 13a) is amended—

1 (A) by striking “contract market” each
2 place it appears and inserting “registered enti-
3 ty”;

4 (B) in the first sentence, by striking “des-
5 ignation as set forth in section 5 of this Act”
6 and inserting “designation or registration as set
7 forth in sections 5 through 5c”; and

8 (C) in the last sentence, by striking “the
9 contract market’s ability” and inserting “the
10 ability of the registered entity”.

11 (17) Section 6c(a) of the Commodity Exchange
12 Act (7 U.S.C. 13a-1(a)) by striking “contract mar-
13 ket” and inserting “registered entity”.

14 (18) Section 6d(1) of the Commodity Exchange
15 Act (7 U.S.C. 13a-2(1)) is amended by inserting
16 “derivatives transaction execution facility,” after
17 “contract market,”.

18 (19) Section 7 of the Commodity Exchange Act
19 (7 U.S.C. 11) is amended—

20 (A) in the first sentence—

21 (i) by striking “board of trade” and
22 inserting “person”;

23 (ii) by inserting “or registered” after
24 “designated”;

1 (iii) by inserting “or registration”
2 after “designation” each place it appears;
3 and

4 (iv) by striking “contract market”
5 each place it appears and inserting “reg-
6 istered entity”;

7 (B) in the second sentence—

8 (i) by striking “designation of such
9 board of trade as a contract market” and
10 inserting “designation or registration of
11 the registered entity”; and

12 (ii) by striking “contract markets”
13 and inserting “registered entities”; and

14 (C) in the last sentence—

15 (i) by striking “board of trade” and
16 inserting “person”; and

17 (ii) by striking “designated again a
18 contract market” and inserting “des-
19 ignated or registered again a registered en-
20 tity”.

21 (20) Section 8(c) of the Commodity Exchange
22 Act (7 U.S.C. 12(c)) is amended in the first sen-
23 tence by striking “board of trade” and inserting
24 “registered entity”.

1 (21) Section 8a of the Commodity Exchange
2 Act (7 U.S.C. 12a) is amended—

3 (A) by striking “contract market” each
4 place it appears and inserting “registered enti-
5 ty”; and

6 (B) in paragraph (2)(F), by striking “trad-
7 ing privileges” and inserting “privileges”.

8 (22) Sections 8b and 8c(e) of the Commodity
9 Exchange Act (7 U.S.C. 12b, 12c(e)) are amended
10 by striking “contract market” each place it appears
11 and inserting “registered entity”.

12 (23) Section 8e of the Commodity Exchange
13 Act (7 U.S.C. 12e) is amended—

14 (A) by striking “contract market” each
15 place it appears and inserting “registered enti-
16 ty”;

17 (B) in subsection (a), by striking “section
18 5a(b)” and inserting “sections 5 through 5c”;

19 (C) in subsection (b)—

20 (i) in paragraph (1), by striking “a
21 contract market’s trade monitoring system
22 implemented pursuant to section 5a(b)”
23 and inserting “the trade monitoring system
24 of a registered entity implemented pursu-
25 ant to sections 5 through 5c”;

1 (ii) by striking paragraph (3) and in-
2 serting the following:

3 “(3) REMEDIES.—On becoming final, the Com-
4 mission deficiency order may require the registered
5 entity to—

6 “(A) institute appropriate improvements in
7 its trade monitoring system necessary to correct
8 the deficiencies in the order;

9 “(B) satisfy stated objective performance
10 criteria to correct the deficiencies;

11 “(C) upgrade or reconfigure existing sys-
12 tems for collecting or processing relevant data
13 on trading and trader or broker activity, includ-
14 ing, where appropriate, the commitment of ad-
15 ditional resources.”; and

16 (iii) in paragraph (5)—

17 (I) in the paragraph heading, by
18 striking “DESIGNATION AS CONTRACT
19 MARKET” and inserting “DESIGNA-
20 TION OR REGISTRATION AS REG-
21 ISTERED ENTITY”;

22 (II) by inserting “or registra-
23 tion” after “designation”; and

24 (III) by striking “board of trade”
25 and inserting “person”;

1 (D) in subsection (d)(2), by striking “sec-
2 tion 5b” and inserting “section 5e”; and

3 (E) in the paragraph heading of subsection
4 (e)(2), by striking “CONTRACT MARKETS” and
5 inserting “REGISTERED ENTITIES”.

6 (24) Section 9 of the Commodity Exchange Act
7 (7 U.S.C. 13) is amended—

8 (A) by striking “contract market” each
9 place it appears and inserting “registered enti-
10 ty”; and

11 (B) in subsection (a)(2), by striking “sec-
12 tion 4o(1),” and inserting “section 4n(1),”.

13 (25) Section 14 of the Commodity Exchange
14 Act (7 U.S.C. 18) is amended—

15 (A) in subsection (a)(1)(B), by striking
16 “contract market” and inserting “registered en-
17 tity”; and

18 (B) in subsection (f), by striking “contract
19 markets” and inserting “registered entities”.

20 (26) Section 17 of the Commodity Exchange
21 Act (7 U.S.C. 21) is amended by striking “contract
22 market” each place it appears and inserting “reg-
23 istered entity”.

24 (27) Section 22 of the Commodity Exchange
25 Act (7 U.S.C. 25) is amended—

1 (A) in subsection (a)—

2 (i) in paragraph (1)—

3 (I) by striking “contract market,
4 clearing organization of a contract
5 market, licensed board of trade,” and
6 inserting “registered entity”; and

7 (II) in subparagraph (C)(i), by
8 striking “contract market” and insert-
9 ing “registered entity”;

10 (ii) in paragraph (2), by striking “sec-
11 tions 5a(11),” and inserting “sections
12 5(d)(13), 5b(b)(1)(E),”; and

13 (iii) in paragraph (3), by striking
14 “contract market” and inserting “reg-
15 istered entity”; and

16 (B) in subsection (b)—

17 (i) in paragraph (1)—

18 (I) by striking “contract market
19 or clearing organization of a contract
20 market” and inserting “registered en-
21 tity”;

22 (II) by striking “section 5a(8)
23 and section 5a(9) of this Act” and in-
24 serting “sections 5 through 5c”;

1 (III) by striking “contract mar-
2 ket, clearing organization of a con-
3 tract market, or licensed board of
4 trade” and inserting “registered enti-
5 ty”; and

6 (IV) by striking “contract market
7 or licensed board of trade” and insert-
8 ing “registered entity”;

9 (ii) in paragraph (3)—

10 (I) by striking “a contract mar-
11 ket, clearing organization, licensed
12 board of trade,” and inserting “reg-
13 istered entity”; and

14 (II) by striking “contract market,
15 licensed board of trade” and inserting
16 “registered entity”;

17 (iii) in paragraph (4), by striking
18 “contract market, licensed board of trade,
19 clearing organization,” and inserting “reg-
20 istered entity”; and

21 (iv) in paragraph (5), by striking
22 “contract market, licensed board of trade,
23 clearing organization,” and inserting “reg-
24 istered entity”.

1 (b) FEDERAL DEPOSIT INSURANCE CORPORATION
2 IMPROVEMENT ACT OF 1991.—Section 402(2) of the Fed-
3 eral Deposit Insurance Corporation Improvement Act of
4 1991 (12 U.S.C. 4402(2)) is amended by striking sub-
5 paragraph (B) and inserting the following:

6 “(B) that is registered as a derivatives
7 clearing organization under section 5b of the
8 Commodity Exchange Act.”.

9 **SEC. 26. REPORT TO CONGRESS.**

10 (a) The Commodity Futures Trading Commission (in
11 this section referred to as the “Commission”) shall under-
12 take and complete a study of the Commodity Exchange
13 Act (in this section referred to as “the Act”) and the Com-
14 mission’s rules, regulations and orders governing the con-
15 duct of persons required to be registered under the Act,
16 not later than 1 year after the date of the enactment of
17 this Act. The study shall identify—

18 (1) the core principles and interpretations of ac-
19 ceptable business practices that the Commission has
20 adopted or intends to adopt to replace the provisions
21 of the Act and the Commission’s rules and regula-
22 tions thereunder;

23 (2) the rules and regulations that the Commis-
24 sion has determined must be retained and the rea-
25 sons therefor;

1 (3) the extent to which the Commission believes
2 it can effect the changes identified in paragraph (1)
3 of this subsection through its exemptive authority
4 under section 4(c) of the Act; and

5 (4) the regulatory functions the Commission
6 currently performs that can be delegated to a reg-
7 istered futures association (within the meaning of
8 the Act) and the regulatory functions that the Com-
9 mission has determined must be retained and the
10 reasons therefor.

11 (b) In conducting the study, the Commission shall so-
12 licit the views of the public as well as Commission reg-
13 istrants, registered entities, and registered futures asso-
14 ciations (all within the meaning of the Act).

15 (c) The Commission shall transmit to the Committee
16 on Agriculture of the House of Representatives and the
17 Committee on Agriculture, Nutrition, and Forestry of the
18 Senate a report of the results of its study, which shall
19 include an analysis of comments received.

20 **SEC. 27. EFFECTIVE DATE.**

21 (a) IN GENERAL.—Except as provided in subsection
22 (b), this Act takes effect on the date of enactment of this
23 Act.

1 (b) JURISDICTION OF COMMISSION.—Section 8, and
2 the amendments made by that section, take effect 1 year
3 after the date of enactment of this Act.

4 **SEC. 28. INTERNATIONAL ACTIVITIES OF THE COMMODITY**
5 **FUTURES TRADING COMMISSION.**

6 (a) FINDINGS.—The Congress finds that—

7 (1) derivatives markets serving United States
8 industry are increasingly global in scope;

9 (2) developments in data processing and com-
10 munications technologies enable users of risk man-
11 agement services to analyze and compare those serv-
12 ices on a worldwide basis;

13 (3) financial services regulatory policy must be
14 flexible to account for rapidly changing derivatives
15 industry business practices;

16 (4) regulatory impediments to the operation of
17 global business interests can compromise the com-
18 petitiveness of United States businesses;

19 (5) events that disrupt financial markets and
20 economies are often global in scope, require rapid
21 regulatory response, and coordinated regulatory ef-
22 fort across international jurisdictions;

23 (6) through its membership in the International
24 Organisation of Securities Commissions, the Com-
25modity Futures Trading Commission has promoted

1 beneficial communication among market regulators
2 and international regulatory cooperation; and

3 (7) the Commodity Futures Trading Commis-
4 sion and other United States financial regulators
5 and self-regulatory organizations should continue to
6 foster productive and cooperative working relation-
7 ships with their counterparts in foreign jurisdictions.

8 (b) SENSE OF THE CONGRESS.—It is the sense of
9 the Congress that, consistent with its responsibilities
10 under the Commodity Exchange Act, the Commodity Fu-
11 tures Trading Commission should, as part of its inter-
12 national activities, continue to coordinate with foreign reg-
13 ulatory authorities, to participate in international regu-
14 latory organizations and forums, and to provide technical
15 assistance to foreign government authorities, in order to
16 encourage—

17 (1) the facilitation of cross-border transactions
18 through the removal or lessening of any unnecessary
19 legal or practical obstacles;

20 (2) the development of internationally accepted
21 regulatory standards of best practice;

22 (3) the enhancement of international super-
23 visory cooperation and emergency procedures;

24 (4) the strengthening of international coopera-
25 tion for customer and market protection; and

- 1 (5) improvements in the quality and timeliness
- 2 of international information sharing.